

THE TRANSFORMATIVE NATURE OF THE GOOD ARGUMENT: REASON AND CARE AS THE FOUNDATION FOR THE TRANSFORMATION OF HUMAN SYSTEMS

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As I see it, one important intellectual advance made in our century is the steady decline in interest in the quarrel between Plato and Nietzsche. There is a growing willingness to neglect the question “What is our nature?” and to substitute the question “What can we make of ourselves?” (Rorty, 1993, p. 115)

Human beings are social animals. We are born into families, we grow in neighborhoods and clans, we participate in the formation of communities, and we are buried by families and friends. It is an anomaly for human beings to live alone; indeed, Genesis 2:18 (Jewish Study Bible, 2004) warns that it is not good for man to live alone. It is rare that a history of a solitary human being is written; histories are written about groups of human beings, families, clans, and nations; biographies and autobiographies are written of the experience of a single human being in relationship with community.

As human animals, we participate in groups primarily through the medium of language. We use spoken language, written language, sign language and other symbolic methods of communication to learn how to exist in our social systems. We often use language as a substitute for violence and as a way of resolving conflict (Zizek, 2008). We use language to obtain what we want, to coordinate community goals, and we use language to negotiate the normative standards of our communities, that is to engage in a *good argument*. Isaacs (1999) says that an argument is a particular technique used in a discussion, a technique that implies the defense of a position. I use the term *good argument* in a specific way: to indicate an intersubjective exchange of views undertaken without the need to defend a position.

OVERVIEW OF ESSAY

This essay addresses the use of language--spoken, written and implied--in a specific way, and the transformational effect of the use of that specific form of language on the subject and the family, neighborhood, community and other organizations within which the subject exists to lay the foundation for the *good argument*. Specifically, the nature of discourse ethics and the effect of discourse ethics upon the person and the community are explored through the development of Habermas' (1981/1987) discourse ethics as part of

The Transformative Nature

the subset of his theory of communicative action within the larger context of his enlightenment project. A review of the theme of reason as the foundation of Habermasian discourse ethics and the presentation of examples of the appropriation of discourse ethics in human deliberative settings will demonstrate the practical relevance of this discussion. By looking at the feminist critiques of Habermasian discourse ethics, the theme of caring becomes apparent as an enhanced (or new) foundation for ethical discourse.

Next, examples from recent empirical studies in democratic institutions are presented to demonstrate the applicability of discourse ethics from the Habermasian and feminist points of view. I then show the expansion of the ethic of reason to accommodate an ethic of care through the development of human rights and the human transformation that grows from that development. Finally, the essay questions the argument that there is an inherent incompatibility between reason and care. In this exploration, it is argued that reason and care are not necessarily best conceived of as related to male or female identity or personality, nor are they mutually exclusive as ethical norms. Rather, the addition of care as an ethical foundation of discourse will bring about the transformation of human beings and the human systems in which they participate.

In this essay, a neo-pragmatist interpretation of reason, as opposed to the classic Kantian interpretation is developed. While Kantian reason may be a useful tool to measure normative conduct, it is not the only tool. The use of care as a moral norm is also useful as a tool. This presentation will demonstrate that the use of a combination of care and reason as a justification for a claim of communicative validity is transformative of the person and the community. Both are necessary for the good to exist in what I am calling a *good argument*. Both are compatible with the neo-pragmatic understanding of reason.

REASON AND JUSTICE AS THE BASIS OF A GOOD ARGUMENT

Immanuel Kant was a transitional philosopher who ushered out the thought of the Middle Ages, and introduced modernity. His major project was epistemological, and from that grew most of the rest of his work. One of the concepts for which he is most known is the *categorical imperative* (1751/2008). In developing his philosophy of the categorical imperative, the issue that Kant was concerned with was how are we to know what is ethical to do. Is there an objective standard that we can follow, or must we rely upon our feelings, as Hume (1751/2008) concluded nearly 30 years prior to the publication of Kant's ideas? For Kant, this question calls for an answer based in reason. In answer to this question, Kant (1785/2010) developed his theory of the categorical imperative derived from the concept of duty, and not out of love or other emotions. The first formulation of the moral imperative is stated as follows: "Act only according to that maxim whereby you can at the same time will that it should become a universal law" (Kant, 1785/2010, p. 231). This is often referred to as Kant's principle of universality and sets an objective standard of normative conduct. The principal of universality is a duty to act in a certain way; it becomes foundational for rule-based ethics, often called "deontological ethics." In this approach, a rule is ethical if it is applied universally

The Transformative Nature

(Alexander & Moore, 2008). The categorical imperative tells us what we should do; reason leads us to that answer. Habermas moved from being told by reason what to do to the more important question of how rational agents can discover what to do themselves.

THE PRINCIPLE OF HABERMASIAN DISCOURSE ETHICS

Habermas (1981/1987) borrows extensively from Kant's notion of Universality in the development of his theory of communicative action: "I have called the type of interaction in which *all* participants harmonize their individual plans of action with one another and thus pursue their illocutionary aims *without reservation* "communicative action"" (p. 294). In doing so, he applies the notion of *act* to the speech act (Austin, 1975). The term *speech act* was developed by Austin to denote a particular type of speech. For Austin, a speech act is an utterance that is neither true nor false, nor is it a statement that is descriptive. To make a speech act is to perform a certain kind of act. For example, during a wedding ceremony to say "I do" is an act, not a descriptive statement, nor can it be true or false. This is a speech act.

Habermas appropriates Austin's theme of "doing things with words" (Austin, 1975) and extends it. For Habermas (1981/1987), a speech act is more than the doing of an act that happens to be speech; it is any action-oriented utterance. For example, "We should build an addition to the house" is a speech act, as is the statement, "We need to go to war." These speech acts are to be distinguished from an utterance that is descriptive of a condition, as in the statement, "Those flowers are beautiful," or an utterance that takes an objectifying view of the world, and is intended as a strategy to manipulate social objects.

Habermas develops his extension of the speech act as part of his program of universal pragmatics and an attempt to explain the generative nature of society:

We can examine every utterance to see if it is true or untrue, justified or unjustified, and truthful or untruthful because in speech, no matter what the emphasis, grammatical sentences are embedded in relations to reality in such a way that in an acceptable speech act segments of nature, society, and internal nature always appear simultaneously. (Habermas, 1976/1998, p. 91)

Habermas (1976/1998) argues that society is created through the everyday practice of free agents negotiating their normative conduct. Speech acts create social relationships between the person that utters the statement and the person that hears the statement. The negotiation of those statements of normative conduct occurs through the application of well-established implicit and explicit rules that organize the way we engage in discourse with one another. The development of the theory and structure of these rules becomes another part of Habermas' project of communicative action.

The theory of discourse ethics can be seen as an outgrowth of the Enlightenment's rejection of religious dogmatism and the concomitant rise of reason as the transcendent foundation of moral activity. Habermas develops the Kantian idea of reason as the seat of morals not by answering the question, "What should be done?" but rather by asking a

The Transformative Nature

different question, “What are the conditions under which rational agents themselves can discover what should be done?”

THE RELATIONSHIP BETWEEN HABERMASIAN DISCOURSE ETHICS AND KOHLBERG’S THEORY OF MORAL DEVELOPMENT

To understand the conditions under which rational agents can discover what should be done, Habermas again borrows concepts, this time from the empirical moral development theory of Kohlberg (1981), who postulated three levels of moral development in children. These levels are the “preconventional,” “conventional,” and “postconventional” (Kohlberg, 1981, p. 16-17). Each level is then subdivided into two stages.

According to Kohlberg (1981), at the preconventional level, the child responds to right and wrong, but only on the basis of their concrete experiences. Stage 1 of the preconventional level is the understanding of morality in terms of punishment, obedience, and the avoidance of harm to others. For example: If I hurt my sibling, I will be sent to my room for an hour; therefore, hurting my sibling is wrong. Stage 2 of level 1 is the instrumental understanding of preconventional reasoning that allows the subject to satisfy her own interests, and letting others do the same.

Level 2 of Kohlberg’s theory is socially focused, for example, meeting the expectations of a person’s family, regardless of the consequences for the purpose of being loyal to the social order. Stage 3 of level 2 is exemplified by the quintessential good girl, following the rules of the family and showing concern for other. Stage 4 of level 2 involves fulfilling one’s duty to the group, and maintaining the social order.

Level 3 is marked by the ability to critically distinguish between the validity of moral norms and the authenticity of the persons agreeing to those norms. The validity of those norms does not depend on the person being a member of the group adopting the norm, and accordingly is not necessarily supported by solidarity. Stage 5 of level 3 is exemplified by the laws and organizing principles of society being privileged, even when conflicting with the norms of the group of which the person is a member. Finally, stage 6 of level 3 is concerned with adherence to universal principles, such as human rights, justice, dignity of human beings, and equality. The levels of Kohlberg’s moral development theory begin with a very personal understanding of the notions of good and bad, right and wrong, and conclude with an almost transcendent understanding of a moral compass (Crain, 2005).

Habermas focuses on the third level in his theory of discourse ethics. With the ability to think hypothetically, and to conduct discourses, the system of ego-demarcations becomes reflective. Until then, the epistemic ego, bound to concrete operations, confronts an objectivated nature; and the practical ego, immersed in group perspectives, dissolves in quasi—natural systems of norms. But, when a person operating at this level no longer naively accepts the validity claims contained in assertions and norms, he or she can transcend the objectivism of a given nature and, in the light of hypothesis, explain the

The Transformative Nature

given from contingent boundary conditions; and he or she can burst the sociocentrism of a traditional order and, in the light of principles, understand (and, if necessary, criticize) existing norms as mere conventions (Habermas, 1976/1979, p. 101).

Edgar (2005) provides an analysis of Habermas's appropriation of Kohlberg's third level of moral development in structuring his theories of communicative action and discourse ethics. In Habermas' conceptualization, human beings develop morally as they grow and become adults. As she or he proceeds from level-to-level, and stage-to-stage, the person looks back and apprehends the deficiencies of the prior level or stage. As we grow, we re-create our moral structures in a new and more mature way. As the person matures, his or her concerns are characterized by greater degrees of abstract reasoning:

Preconventional notions of bonds and loyalties are based either on the complementarity of command and obedience or on the symmetry of compensation. These two types of reciprocity represent the natural embryonic form of justice conceived *as* conceptions of justice. And only at the postconventional stage is the truth about the world of preconventional conceptions revealed, namely that the idea of justice can be gleaned only from the idealized form of reciprocity that underlies discourse. (Habermas, 1983/1999, p. 165)

At the lowest level of moral growth, the level of abstraction is very local and concrete; punishment and reward affects the child directly. At the highest level, moral understanding is universalized and completely abstract. Moral concerns are directed beyond the person, beyond the family, and beyond the clan. As the person's level and stages of moral development matures, the level and stages of intersubjective communication mature as well. Argument over values to the family and clan takes the place of argument over the value to self and others. Argument itself matures into discourse. Discourse over universal values and morals take precedence over argument over clan and family values (Habermas, 1983/1999).

Argumentation insures that all concerned in principle take part, freely and equally, in a cooperative search for truth, where nothing coerces anyone except the force of the better argument. Practical discourse is an exacting form of argumentative decision making. Like Rawls's original position, it is a warrant of the rightness (or fairness) of any conceivable normative agreement that is reached under these conditions. Discourse can play this role because its idealized, partly counterfactual presuppositions are precisely those that participants in argumentation do in fact make. (Habermas, 1983/1999, p. 198)

THE DEPENDENCE ON THE IDEAL AND ABSTRACT

Argument thus becomes the core of Habermas' theory of communicative action. The ability to argue abstractly and ideally becomes the central point in his theory of normative agreement: "Moral justifications are dependent on argumentation actually being carried out, not for pragmatic reasons of an equalization of power, but for internal reasons, namely that real argument makes moral insight possible" (Habermas, 1983/1999, p. 57).

The Transformative Nature

Habermas's grounding of his moral theory in action, the speech act, is important if he is to defend his theory from attacks that it is based on cultural contingencies, and therefore not universal. Habermas is interested in demonstrating that principles of moral and normative conduct are not grounded in tradition, but belong to any group of competent actors in any society (McCarthy, 1999).

Argument is the core of Habermas's moral program, but not just any kind of argument:

Only the "force of the better argument" should have the power to sway participants. Discourse, as an idealization of this kind of activity, must set conditions such that only rational, that is, argumentative convincing, is allowed to take place. It must be a structure that is immunized in a special way against repression and inequality.

This immunization is gained through a set of rules designed to guarantee discursive equality, freedom, and fair play: No one with the competency to speak and act may be excluded from discourse; everyone is allowed to question and/or introduce any assertion whatever as well as express her attitudes, desires, and needs; no one may be prevented, by internal or external coercion, from exercising these rights. (Chambers, 1995, p. 238)

Habermas (1976/1998) explores speech acts through five levels of analysis before he reaches the level that he is interested in: context dependent speech. By this, he means argument is based upon speech acts that generate a context, not merely speech acts in the original sense of the phrase. As a context generating statement, it must be open to question (Habermas, 1976/1979), and it is at this point that Habermas introduces validity claims into the structure of his discourse ethics. Habermas (1983/1999) states that in every speech act a number of claims of validity are implicitly made (p. 58). When I make an utterance, I implicitly state that utterance to be valid, and I make my utterance open to challenge. Once my utterance is challenged, the expectation is that I will supply a response that satisfactorily responds to that challenge, in Habermasian terms, the claim is "redeemed" (Habermas, 1983/1999, p. 62):

It is part of understanding a sentence that we are capable of recognizing *grounds* through which the *claim* that its truth conditions are satisfied *could be redeemed*. This theory explains the meaning of a sentence only mediately through knowing the conditions of its validity, but immediately through knowing grounds that are objectively available to a speaker for redeeming a validity claim. (Habermas, 1981/1984, p. 317)

According to Habermas (1991/1994, p. 58), an utterance always consists of several validity claims: that the utterance is true, that the claim is right, that the claim is intelligible, and that the person uttering the claim is sincere. To make a validity claim about the truth of an utterance is to implicitly state that there are good reasons for the speaker to believe that the utterance is true (Habermas, 1981/1984). For example, when I say the sun came up this morning, I am implicitly stating that the truth of that utterance is valid and I have good reasons to believe that it is true. Of course, my interlocutor is free to challenge my truth statement, and at that point I will be expected to justify it.

The Transformative Nature

When Habermas states that a claim is *intelligible*, he means not only that the statement means something, but that it means something in the intersubjective sense, that the participants have communicative competence, which is the ability to speak in ways that convey meaning (Sutter, 2005, p. 287), or the “fundamental system of rules that adult speakers master to the extent that they fulfill the condition for a happy employment of sentences in utterances” (Habermas, 1976/1998, p. 41), and that the participants to the discourse actually share an understanding of that meaning. If an utterance has communicative validity, then either the participants to the conversation share a value or a norm or the claim was challenged and redeemed and thus a change in the norm or the value occurred between the participants to the argument. The last validity claim is that of sincerity or that the utterance is subjectively valid, that the speaker is honest about her statement of interests, perspectives, and values. When all three validity claims have been accepted by the participants to the communication the utterance has normative validity (Habermas, 1983/1999).

Sutter (2005) states that of the three validity claims, those that are the most problematic from an epistemological standard are the intersubjective nature of communicative competency, and the claim to subjective validity. The claim to subjective validity becomes problematic since the utterance can only be truly known to the person uttering it; to be subjectively valid, the speaker must be free from external and internal constraints in making the utterance. Intersubjective validity includes the problems associated with subjective validity and the additional problem resulting from overt or hidden power structures, conditions such as the relationship between the participants as parent and child, and teacher and student. Sutter (2005) discusses the concurrence of subjective and intersubjective validity as a transformative moment, and describes such a moment in Habermasian terms:

As a result of deliberating on their common policies, they also learn about the impact of policy decisions on their own and other’s personal and shared lives (life worlds [*sic*]). After being faced with the knowledge of the communicative impacts of their original assumptions, opinions and senses of right, they then adjust their norms to better reflect their understanding of what would be best. This reflects a movement in which the life-world and system world become more less incompatible with each other, and this is the emancipatory goal of normative rationality. (Sutter, 2005, p. 168)

For Habermas, discourse ethics, then, is not directly concerned with the exploration of the answer to the ethical question. Discourse ethics is a transcendent theory of social structure that describes how rational social actors discover for themselves the answer to the ethical question. There are good and empirical reasons to believe that Habermas was accurate in his description of the ethical process; there are also good reasons to believe that more is needed in order to achieve a fuller understanding of ethical action. Each of these statements will be explored below. Yet, there are also good reasons for being suspect of Habermas’ theory of communicative rationality since Kohlberg’s work is based upon arguably flawed research as Gilligan (1982) has shown, and will be explored more fully below; women were not a part of Kohlberg’s study and, as a result, the value of care did not become a part of his moral criteria.

The Transformative Nature

CARE AS THE BASIS FOR THE GOOD ARGUMENT

Reason and reasoned justice are the foundations of Habermasian discourse ethics. Habermas (1983/1999) argues that the application of abstract, universalized reason will lead rational agents to self discovery of the right thing to do and to communicatively established norms. The application and use of emotion and care is not within Habermas' notion of reasoned discourse since reason, in his conception, is by its very nature transcendent, objective, and non-contingent. In contrast, Gilligan (1982) argues that reliance upon the abstract justice to the exclusion of the contingent nature of human caring in discourse ignores the experience and outlook of women.

GILLIGAN'S CRITIQUE OF KOHLBERG'S THEORY OF MORAL DEVELOPMENT

Carol Gilligan (1982) was a student of Kohlberg and engaged in empirical research concerning the validity of Kohlberg's stages of moral development. While selecting a sample of women for a study of the relation between judgment and action in a situation of moral conflict and choice, Gilligan identified a difference between women's experience and the representation of universal human development as reflected in the literature, with women consistently scoring lower on Kohlberg's measures of moral judgment. The common rationale for that disparity was that it signified a problem in women's development. Gilligan argues for a different viewpoint, stating that the representation of human development in the literature is a limited one, specifically a representation that omits a specific vision of the truths of life, a vision that comes from the experience of women.

Gilligan points to methodological defects in Kohlberg's research that explain the consistent lower scores of women on Kohlberg's measure of moral judgment. The empirical research upon which he based his theory of the levels of moral growth of children through adulthood consisted of a study of 84 boys whose development Kohlberg followed for 20 years; his study included no girls. Although Kohlberg (1981) claims that his principles of moral development are universal, his theory does not take into account the moral reasoning that motivates women. As a result, women do not measure well at the highest level of his scale (Baumrind, 1986). The traits that have traditionally been associated with women, such as kindness, care, and sensitivity toward others are not specifically identified within Kohlberg's moral structure at all, and in fact mark them as being morally deficient as being less involved in fairness. As Gilligan (1982) writes:

When one begins with the study of women and derives development constructs from their lives, the outline of a moral conception different from that described by Freud, Piaget, and Kohlberg begins to emerge and informs a different description of development. In this conception, the moral problem arises from conflicting responsibilities rather than from competing rights and requires for its mode of resolution a mode of thinking that is contextual and narrative rather than formal and abstract. This conception of morality as concerned with the activity of care centers moral development around the understanding

The Transformative Nature

of responsibility and relationships, just as the conception of morality as fairness ties morality to the understanding of rights and rules. (p. 19)

Gilligan argues that the meaning of this divergence in method and conclusion is that a different conception of morality results when the values of women are examined, a morality that is situated in conflicting responsibilities rather than competing rights. This morality requires thinking that is contextual and narrative rather than abstract and formal. The highest value in Kohlberg's structure is the *right*, the right to be free and the right for others to be free (Kohlberg, 1981, p. 216) while the highest value in the structure proposed by Gilligan (1982) is the *responsibility* to take care of the other (p. 19). Although this particular conceptualization of morality has been called "feminist," Gilligan takes particular care to point out that it is neither male nor female oriented, rather is it a stance that can be taken by either sex.

Gilligan's (1982) conclusion is that Kohlberg's methodology is deeply flawed, not in the sense that abstract justice does not enter into moral reasoning, but that an entire moral orientation is left out of the Kohlberg's description of what people actually do when considering questions of normative agreement. She argues that women, a significant part of the population, have traditionally employed a different kind of morality, a morality of care and relationship, a way of conceiving morality that is different than the one most commonly used by men. The argument is not that Kohlberg's theory is wrong, but rather that it is simply incomplete.

THE BASIS OF THE THEORY OF COMMUNICATIVE ACTION

Pajnik (2006), drawing on the critiques of other feminist social analyses, develops Gilligan's ideas in several ways in relation to Habermas' theory of discourse ethics. For Habermas, discourse ethics is based upon the speech act, the spoken word or the text. This communicative structure ignores the spectrum of non-language communication, body language, gestures, and other non-linguistic modes of communication. She argues that non-linguistic modes of communication foster non-linguistic modes of thinking, thinking that is imaginative and flexible. Pajnik (2006) has called this form of discourse "communicative action" (p. 391). Communicative action does not reject communicative rationality, but rather seeks to extend it.

The theory of communicative action is based on more than intersubjective *communication* as contained in discourse ethics. Communicative action is also based upon intersubjective *action* with others and arises from the impulse to take action, and the responsibility for taking action. Habermas' discourse ethics, which is presented as being descriptive, borrows theory from Kohlberg, which is based on incomplete empirical research. The theory of communicative action is also based upon empirical data, and must be accorded as much validity as Habermas' theory, unless the transcendent nature of reason is to continue to be privileged. The ethics of care was developed to correct what was seen as an application of the principles of rational justice from an objective position, without taking into account the fact that all participants to discourse are contingently

The Transformative Nature

situated within the system that supports the discourse, and cannot be abstracted from those contingent situations. The ethic of care recognizes the contingent nature of all participants to discourse and the demand to take into consideration the subjective situation of all participants.

COMMUNICATIVE ETHICS AND COMMUNICATIVE ACTION AS THE FOUNDATION OF NORMATIVE AGREEMENTS

Both communicative ethics and communicative action are descriptive theories; they are attempts to describe what agents do in the world to come to an agreement regarding normative standards. Both of these theories can be empirically validated if examples can be found demonstrating what people do in an attempt to reach agreement in dynamic systems that actually mirror the theories of communicative ethics and communicative action. In this section, I discuss some of those examples. In attempting to discover human systems that most accurately represent conditions of communicative ethics and communicative action, I have selected a small system and a large system.

CARE AND REASON AS EVALUATIVE CRITERIA FOR CONSENSUS PROCESSES

Sutter (2005) conducted qualitative research of residential communities in order to test the empirical validity of Habermas's theory of communicative ethics. Her study provides surprising data supporting the theory of communicative action, including the influence of affect upon the participants to discourse as evaluative criteria of the validity of the results reached through the process of consensus.

Sutter (2005) studied three different residential communities that had made a commitment to consensus process as their primary method of decision making. The purpose of the study was to determine if there was correlation between discourse ethics as developed by Habermas and evaluative criteria used by experienced practitioners of consensus process in determining whether or not their process was valid. Comparing Habermas' discourse ethics with the actual evaluative practice of those persons using consensus process proved to be problematic due to the gap between theory and practice.

Sutter addressed the problem of the gap that exists between Habermas' theory and the practical application of placing that theory into practice by utilizing approaches developed by practitioners who appropriated Habermas' theory of communicative action for the purpose of evaluating public participation in democratic discourse. Forester (1985, 1993, utilizing Habermas' discourse ethics, developed a practical methodology to evaluate the validity of public participation in planning processes. Dayton (1999) also incorporates discourse ethics for the purposes of evaluating public participation in the creation of environmental impact statement. By appropriating the methodologies developed by Forester and Dayton from Habermas' theory of discourse ethics Sutter solved the problem of actually using discourse ethics as an evaluative process.

The Transformative Nature

Sutter (2005) tested both evaluative techniques developed by Forester and Dayton by validating them through comparisons with questions asked by experienced practitioners of consensus process in three different intentional residential communities that had made commitments to using consensus process for community decision-making. The questions asked by these experienced practitioners were used to test the validity of their consensus process. These techniques appropriated from Forester and Dayton corresponded with the evaluative techniques used by practitioners of consensus process, with one exception. The practitioners of consensus process in the three communities that Sutter studied broadly agreed with the evaluative goals specified in discourse ethics and, in addition, evaluated the process in terms of affect. Specifically, participants in Sutter's research described the importance they placed on the quality of the experience of the subjective communicative act in terms of how good it felt, the impact of the process upon their feelings, and the impact of their feelings upon the process. For example, in evaluating the subjective validity of a democratic process Habermas, as interpreted by Forester and Dayton asks "can we trust"? The participants in Sutter's study asked the question "did the process make a positive emotional impact on participants, and was the process benefited by the participants' attitudes?" Similarly, in evaluating questions of communicative competence Forester and Dayton ask: "what does this mean, and is it communicating effectively to a mixed audience"; the participants in the study ask the question; "did participants communicate in ways others could understand?" (Sutter, p. 229).

Sutter's (2005) research shows that the subjective context of the participants to discourse was a part of their evaluative process as much as the objective context. Discourse ethics relies upon the subjective validity of the speech act, that is to say, it is an honest representation of the position of the person uttering it. An ethic of care, which is used interchangeably with the term communicative action by Pajnik (2006), demands more of subjective validity; it requires an honest representation of the internal state of the speaker. Only if an honest representation of the internal state of the speaker is communicated can others in communication with the speaker be called to action. A further empirical example of the growth of care in the creation of normative standards can be seen in the historical development of human rights, as described in the following section.

THE EMERGENCE OF CARE AS CRITERIA OF NORMATIVE CONDUCT

Ishay (2004) observes that human rights are rights that are held by individuals simply because they are part of the human race. They are shared equally, regardless of sex, race, nationality or religion, and they are universal in nature. Human rights, then, are statements of normative conduct that may be based upon a political, theological, or social understanding. To the degree that human rights have been based upon agreement, as opposed to authority or tradition, those rights have been negotiated. The methods, values, and procedures of those negotiations have varied, but the writings of Enlightenment thinkers inform much of the language of human rights discourse (Hunt, 2007; Ishay, 2004). The examination of values and methods used in human rights discourse is useful

The Transformative Nature

in determining the nature of rules and values relating to discourse since they are aimed at achieving normative agreement.

Hunt (2007) argues that human rights have a biological basis in the ability of human beings to empathize. She begins her theory as a literary critique of Rousseau's 18th century novel *Julie, or the New Heloise*. Readers of *Julie* reported that they were unable to withstand the "torrents of emotion" (Hunt, 2007, p. 36) that they felt in their identification with the characters in the novel. *Julie* allows its readers to empathize not only from character to reader, but across age, class, religious and sexual lines. A year later, Rousseau (1893/1983) published *the Social Contract*, and introduced the concept "the rights of man" (p. 210).

Although the capacity for empathy is innate in most human beings, it is developed through socialization. Empathy is expressed by each culture in its own particular fashion. The particular culture that existed during the Enlightenment period featured both justice based upon the concept of reason, and justice based upon the emotion of empathy. Piliavin (2009) provides a compelling argument based in part upon studies of day old infants reacting most strongly to the cry of another infant rather than their own cry, that empathy is as Hunt (2007) has argued, biologically based, and a precursor to helping and altruism, which appear to be, according to Hunt, socially constructed and culturally manifested (Hunt, 2007). The normative agreements that define human rights are based on empathy and an ethic of caring. These agreements may be supported by a reasoned justice, but the impulse that generates them is empathy and caring. The emergence of an ethic of caring can be demonstrated historically by examining the use of language in documents that normatively describe a culture at various times. The individual is a part of his or her culture and as Mead (2007) has shown, is socialized and constituted by the culture of which he or she is a part. Language is a part of that socializing process.

Schieffelin (1990) believes that the use of language socializes the individual and the culture. A corollary to Schieffelin's notion is also true: culture socializes the individual and the ways in which language is assimilated. The use of language in written form is an indicator of the values and norms of a culture or society. Languages within documents that are normative in nature are illustrative of the values of the particular culture at the time of the creation of those documents. These statements of normative values can be thought of as a snapshot of the ethical norms of a particular culture at a particular time.

I have created a word count of a number of these documents, including the Magna Carta, the English Bill of Rights, the Declaration of the Rights of Man and the Citizen, the American Bill of Rights, and the Universal Declaration of Human Rights. The number of instances of specific words can provide a notion of the normative values expressed in the particular document. The Magna Carta (The UK Statute Law Database, 1297) dates from 1297. The most frequent words in that document are *land, barons, England, kingdom, debt* and *wardship*. The English Bill of Rights (The Avalon Project, 1689) was enacted by parliament in 1689, predating the writings of Kant by 100 years. The words used with the most frequency are *parliament, laws, lords, majesties, crown and commons*. The Constitution of the United States: Bill of Rights (The Avalon Project, 1787), contains the

The Transformative Nature

following frequently used words: *states, people, person, and jury*. The Declaration of the Rights of Man (The Avalon Project, 1789) was enacted in 1789. The most frequent words in that document are *law, rights, citizen, public, and man*.

These social documents from the Western tradition can broadly be respectively categorized as pre-Enlightenment, transitional, and enlightenment influenced. The oldest document contains words relating to property and the dominion of property. The various documents coming into existence during the Enlightenment period (1750 through 1850, Bristow, 2010) primarily deal with the rule of reason and law. For example, the values expressed in Magna Carta relate not to reason or law but to the simple exercise of power over people and property. The values expressed 500 years later move away from power relationships to the relationships between people and the state based upon the rule of law and reason. Absent completely from both time periods are normative statements suggesting care or emotion.

The Universal Declaration of Human Rights (The Avalon Project, 1948) was adopted by the United Nations General Assembly in 1948. The changes in normative statements in that document from normative statements made during Enlightenment and pre-Enlightenment times are significant. In the Universal Declaration of Human Rights, the terms *property, land* or synonymous terms do not appear in the most frequently used 50 words. The most frequently used word is *everyone*, followed closely by the words *rights, equal, entitled, human, social, family, and education*. Although the word *law* is among the top 50 words used in the Universal Declaration of Human Rights, it is used at the same frequency as *education* and *protection*.

The Convention on the Elimination of All Forms of Discrimination against Women (University of Minnesota, 1981) was entered into force in 1981; the most frequent word in that document is predictably *women*. Words that occur with decreasing frequency are: *discrimination, equality, family, and human*. Words that have not generally appeared with frequency before are *marriage, employment, and children*. The use of these words in a document that asserts its universality suggests that for the first time concerns for the family, family, discrimination, equality, and human have become normative. The growth of these normative values are probative of an increasing awareness of an ethic of caring.

In 1990, the International Convention on the Rights of the Child (University of Minnesota, 1990) became law. For the first time in the major human rights statements reviewed here, the word *care* appeared within the 50 most frequently used words. The word *child* appeared most frequently. Other words that appear with frequency are *respect, family, human, health, education, and assistance*. The frequent use of these words indicates that caring has become universally normative as are concerns for health and assistance.

The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (United Nations, 1990) was enacted in 1990; the words that are most frequently found in the document are: *workers, migrant, state, members, members, employment, and families*. Words in that document that have not generally

The Transformative Nature

appeared in other human rights texts reviewed here are: *concerned, conditions, information, origin, migration, and residence.*

The Vienna Declaration and Program of Human Rights (United Nations, 1993), adopted in 1993, contains additional words that have not been seen previously: *respect, human, freedoms, everyone, concerned, and acceptance.* The shift from a normative statement as expressed in Magna Carta that centers on power and property to a normative statement that centers upon women, families, children, employment, and information, as expressed in the several declarations enacted into law by the United Nations is clearly evidence of the transformation of culture on a global scale.

The constellation of words that describe cultural norms has changed significantly over the last 800 years. At the time of Magna Carta, property and property rights were the focus of normative statements. During the times of the French and American revolutions, justice, reason, and the rule of law become the centerpiece of normative statements. By the time the Universal Declaration of Human Rights was enacted, normative statements relating to education, human, social, and family have completely displaced the older normative references to property rights. The normative statements contained within Magna Carta cannot be said to be universal other than being universally applied within the culture that forced King John to submit to its terms. In contrast, the Universal Declaration of Human Rights can (by its own terms) be said to be a universal statement of the normative statements expressed within its text. Significant evidence has been presented to support a conclusion that reasoned justice and caring are today universally affirmed norms. In the next section of this essay, I will show that not only are reason and care evident in our global culture, they are, in addition, both aspirational values.

COMMUNICATIVE ETHICS AND COMMUNICATIVE ACTION AS ASPIRATIONAL CULTURAL VALUES

I have argued above that normative values of reasoned justice have slowly accommodated an ethic of caring. A question that arises from observation of that phenomenon is whether the rise of care as an ethic necessarily indicates the lessening of the ethic of reasoned justice. Are care and reason mutually exclusive in practice? Hume (1751/2008) states that it is emotion that moves us, not reason. Kant (1997, 1785/2010) argues forcefully that it is transcendent reason alone that can lead us to answer the question, what should we do. It has been argued that the differences between reason and care are insurmountable (Parkin, 1985; Vetlesen, 1994). However, the belief that reasoned justice and caring are at two ends of a dualistic systems can no longer be defended. Rigorous research (Sutter, 2005) has shown that ethics of care and reasoned justice have both been employed by participants in democratic deliberation. The question that needs to be asked instead is whether reason and caring are separate experiences (Pajnik, 2006), or whether the notion of separation is an illusion born from Enlightenment thinkers' attempt to create an epistemology based upon reason, rather than tradition, scripture, and revelation (Vetlesen, 1994). The use of reason and caring as values that are

The Transformative Nature

both necessary and useful can be shown to exist in practice as well as accommodate the notion of the non-static, contingent self together with community.

REASON AND CARING COMPLEMENT EACH OTHER

Below, I show that reason and care are two different dimensions of ethical experience. Hume (1751/2008) argues that making the leap from the descriptive (fact) to the proscriptive (value) is impossible. This argument is commonly known as the is/ought problem, or Hume's guillotine. As a result of this problem, he concludes that all moral understanding must be based upon sympathy, which derives from an instinct for association with others. It is emotion that moves us to act, not reason. Kant (1997), by contrast, building upon his prior work on the development of morals, argues that all moral understandings have their basis in reason. The ethical framework that Kant proposes is based upon reasoned, rule-based, justice. To follow the reason is to be a good person. Hume's concept of morality is clearly not based on reason; it is based on sentiment, a feeling that is grounded on the value of associating with others. The structures of reasoned justice and sentimental justice are not necessarily exclusive, since the existence of emotion can be seen to be as a separate dimension of ethics as the use of reason. They are two different methods of ethical questioning: (a) Kantian reasoning is deontological ethics in its pure form, where acts are performed from a sense of duty to the moral law; and (b) Hume's ethics—based upon sympathy—is an example of virtue ethics, where acts are performed because they are virtuous. An act is virtuous when it contributes to the development of human character (Wiggins, 1998).

However, Driver (2004) argues that the morality of Kant is based upon a virtue, and that virtue is having a strong sense of duty; virtue ethics is based upon having harmony with the good. Both Hume's and Kant's approaches are unsatisfactory because they are incomplete. The sentiment that motivates doing a virtuous deed may produce unexpected results or emergent characteristics, and reason by itself may not bring about a good result, since the norms of any society may be internally reasonable, but bring about unethical or inhumane results, as did the culture of slavery of the antebellum American South. A balance between reason and sentiment is needed if a good result from our virtuous acts is the test of morality. Kantian duty reason can be corrected by the desire to care, and this sentiment is held in check by reason, through deliberation on the prospective consequences of action motivated by care.

There is another justification for using both virtue and reason as correctives for each other. Rorty (1979) argues compellingly that the questions of philosophy relating to epistemology are mere vanity and have no application in the world. Philosophy, for Rorty is rightly the tool of human flourishing and the goal of thought is not to create a correct mirror of reality, but to serve the interest of human solidarity. Rorty approaches knowledge from the point of view of the neo-pragmatist, which is to say that the fact/value dichotomy does not exist, and the true test of the ethical good is what matters to human beings. Without the fact/value distinction, there is no impediment to using both reason and caring as ethical foundations for discourse. The test of what is ethically good

The Transformative Nature

is that which is good for human beings as opposed to abstract, transcendent non-subjective rationality; both reason and caring can become equally corrective upon each other, since reason can act as a check upon emotion and emotion can act as the contingent context of reason.

CONCLUSION

The Transformative Effect of a Discourse Ethic

Based Upon Reason and Care

In this essay, I have been concerned with the way that human beings come to agree upon normative conduct. I am also concerned with the transformation that occurs within the persons who make up human systems and the human systems that make up society as a result of the processes of coming to those normative agreements. Jürgen Habermas has developed a critique of reasoned discourse called discourse ethics, which is based in part upon the highest level of abstract reasoning as developed by Lawrence Kohlberg in his theory of the ethical development of the human being. Carol Gilligan and others have forcefully argued that the value of care is absent from Kohlberg's theory, and as a result absent from Habermas' discourse ethics. In this essay, I have examined the recent study conducted by Katheryn Sutter who discovered that experienced practitioners of consensus process did evaluate the effectiveness of their process in terms similar to that expressed by Habermas' discourse ethics, but additionally in ways that can only be categorized as caring. Human beings reason together; they also care together. Sutter's findings support the conclusion that a theory of communicative action that fails to include the dimension of caring is incomplete.

Additionally, the transformative effect upon a community of an ethic based on both reason and care is illustrated by Sutter's (2005) study. In one of the communities that she studied, Sutter observed that some of the residents embarked upon a three-year project of building consensus around shared environmental issues. The genesis of this process was the concern of one individual who did not believe that she could share her belief about the non-dualistic relationship between people and animals without being perceived radically non-objective. More broadly, the fact that the community had not shared intersubjective norms relating to the relationship between people and animals made it appear that her norms were the subjective representations of a confused mind, which undermined her credibility as a participant in rational discourse. The consensus building process created an appreciation of shared norms that were larger than the specific items on the community's agenda. As a result, the larger community came to realize the existence of the shared values, and the community became transformed through this communicative process. The transformative process was not so much a change of the minds of the participants as an increase in the range of shared norms among the participants regarding the smaller issues on the agenda. Sutter does not report on the affect of this community transformation upon the woman whose differences of viewpoint

The Transformative Nature

came to be understood, but it can be hypothesized that by having her concerns heard and recognized as normatively valid, her position in the community discourse became valued.

The texts reviewed here that have been created on national and international levels reflecting the changes in shared norms among communities and groups emerge from the same types of processes as the posters and texts that resulted from the conversation between the alienated woman and the rest of her community in Sutter's study, which is the process of building consensus to shared norms. Both processes reflect an increasing application of the value of care. As discussed previously, the time between the writing of the Magna Carta and the Universal Declaration of Human Rights shows a tremendous change in the nature of concern for the person and the community over approximately 800 years. Concern for the person and the community from the time the Universal Declaration was enacted to texts evidencing contemporary mores in contemporary times is also stronger, as has been shown in the prior analysis of the Convention Against Discrimination and the Vienna Convention. The process of moving from the normative values expressed in the Magna Carta to the normative values as expressed in the Convention Against Discrimination and the Vienna Convention can be considered a process of consensus building, consensus building based upon the two values of reason and care.

Is care the stepchild of reason, or something greater? Care can be conceived as the impulse that moves us toward community and is foundational to reason. Held (1995) argues that reasoned justice and care as normative values are both needed, and in fact exist in post-modern society. She concludes that care is fundamental to human life and is at the root of all ethical formulations. Reasoned justice develops later and should therefore accommodate itself to the ethic of care.

An additional question that practitioners of systems of reason or care as moral values must address as agents of transformation is the degree of inclusiveness of their definition of "usness." We care about our family and our friends, but can we care about the world in the same way? Does the impulse of care move us to transformation, a transformation that allows us to encompass a larger conception of our *family, our clan, us?*

The norms of Western civilization have been transformed over time, from an overarching concern with the possession of property and the exercise of power, through the rule of reasoned justice to a concern for human beings as ends to themselves, to be cared for, and nurtured. Much like the posters that were installed by the participants to Sutter's study, the normative statements as *articulated by* the various declarations reviewed in this essay reflect those normative statements back to the various communities, cultures and nations adopting them, with the same effect as upon the community studied by Sutter, that is, the development of a new awareness of shared norms that encompass the smaller issues upon the agenda under discussion. The increased use of the ethic of care in these larger shared norms is evidence of the transformation of the various communities through the process of political and social discourse.

The Transformative Nature

Finally, in this essay, I have shown that care and reason are not mutually exclusive values. Care is basic to human existence and gives rise to the impulse to act toward the other, while reason will allow us to extend that care beyond our family, clan and nation.

In this essay, I have argued that while reason is a tool that human cultures have used to negotiate issues to reach agreements of normative conduct, it is simply insufficient to bring about a transformation of human systems on its own. Reason is, more than anything else, a tool that can create strategies to carry into practice goals that have their inception in the emotion of care. Neither reason nor care are values that can alone accomplish a telos of human flourishing; both are needed, and both are slowly emerging as complementary tools to carry society forward toward that telos.

Coda

Huckleberry Finn (Twain, 1884) writes a letter to the owner of Jim, a runaway slave and Finn's comrade during his river journey. The letter discloses Jim's location. As a result of this confession Finn feels unburdened, washed of sin, and relieved by his near escape from the hell of the violation of the norms of his culture. Finn holds his letter while he thinks of Jim and the time that they have spent together, and he sees Jim in his mind's eye as he deliberates about what to do with the letter:

In the day and in the night-time, sometimes storms, and we a-floating along, talking, and singing, and laughing...It was a close place. I took it up and held it in my hand. I was a-trembling, because I'd got to decide, forever, betwixt two things, and I knowed it. I studied a minute, sort of holding my breath, and then says to myself: "All right, then, I'll go to hell"-and tore it up. (Twain, 1884, p. 296)

Finn is transformed by the emotion that he experiences from truly seeing Jim, not as an object, a thing that is owned by another, subject to "reasoned" justice, law, and to be returned to his owner as just another tool, or other piece of property, to seeing him instead as a human being, a comrade who has shared the experience and danger of Finn's journey on the river. Finn's transformative moment came about through engaging in the good argument with himself, his culture, and experience of emotion, sympathy and solidarity. That same transformative moment is available to all people through the good argument based upon reason, emotion, and caring.

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