
**The Communicative Ethics
Controversy**

edited by Seyla Benhabib and Fred Dallmayr

APEL -
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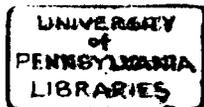
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**Is the Ethics of the Ideal
Communication Community a
Utopia? On the Relationship
between Ethics, Utopia, and
the Critique of Utopia**

Karl-Otto Apel

I Statement of the Problem

The contemporary concept of *utopia*, from which I take my departure here, is surprisingly more or less clear and well known. This stands in contrast to the extreme ambiguity and ambivalence that characterizes the concept and evaluation of utopia in the specialized literature on this theme—from the positive evaluation in the sense of Thomas More's *Utopia*¹ and the reflections upon utopia by Karl Mannheim² or Ernst Bloch³ to the negative judgment of Leibniz,⁴ Baumgarten,⁵ the early socialists⁶—themselves later known as “utopian”—and finally of Marx and Engels.⁷ Yet leaving aside this historical-hermeneutic and philosophical problematic of “utopia,” there exists today a working consensus on the negative meaning “utopia” and the “utopian” that appears at first sight to be presupposed in the titular question of my contribution.

I admit that this interpretation of the question also originally stood at the forefront of my interests—that is, to a certain extent, the intention of defending a specific concept of ethics against the common attack of “utopianism.”⁸ Yet, the issue cannot merely be to call into question a specific conception of ethics, in the light and by the standard of an apparently unambiguous negative concept of utopia; what must also be attempted—in the light and by the standards of a rationally groundable ethics—is a clarification of the notorious ambivalence of the concept of “utopia” itself. It might indeed be the

case that the contemporary critique of "utopianism" is by and large justified, but that, equally, the idea of a fictional "utopia" as representation of a hypothetical alternative world expresses an indispensable anthropological function.⁹ Over and above this, it might also be the case that a rationally groundable ethics readily provides criteria for the demarcation between a dangerous and a necessary utopia: the normative standards of a "principle of responsibility" that might serve to legitimate the fictional utopia as an exploratory element in the sense of a "heuristics of hope" and a "heuristics of fear."¹⁰

The following framework for my contribution can be derived from this interpretation of the question that I have just outlined:

1. First, I wish to attempt to characterize the concept of utopia that underlies the present-day critique of "utopianism." From the outset, this takes place with the intention of rendering intelligible why it is that the contemporary critique of utopia is not related primarily to fictional-literary utopias in the narrower sense, but rather is fundamentally directed against an ethical-historical-philosophical conception that is viewed as *utopian* and thus as dangerous. From this point it will also be made clear why the critique of "utopianism" is directed against the ethics of the ideal communication community.

2. In the second section of my contribution, I wish to attempt to present this ethics in a necessarily summary form. In so doing, my intention is to demonstrate the following: that the basic form of the ethics in question can be grounded in an undisputably valid manner, independently of any historical-philosophical prognosis and of any concrete-fictional conception of a possible, better world; that, at the same time, however, it contains a quasi-historical-philosophical and quasi-utopian dimension of anticipation: a dimension of the partial justification and critique of the (anthropological function of) fictional and historically-philosophically "transcended" utopia.

3. In the third section, the conception of a "critique of utopian reason"—a conception whose necessity has already been shown in the second section with the partial ethical justification of the utopian intentions¹¹—will be elucidated in exemplary

fashion by means of the "utopia" of "domination-free" communication.

II The Concept of Utopia and Motives of the Current Critique of Utopianism

The main characteristics of the concept of utopia in the contemporary critique of "utopianism" can be typified if one interprets the critique of "utopianism" as the expression of an ideological-political discussion in the "rationalized public sphere" (Kant). This provides us with the following major aspects:

1. With reference to the problematic of a reconstruction of the fictional "utopia," it should first of all be emphasized that the current critique of "utopia" does not proceed—or not immediately—from the literary paradigm established by Thomas More's *Utopia*, but rather from the extended, philosophical-anthropological concept of "utopian intention" or "form of thought" as it has been introduced by more recent exponents of a positive concept of utopia, such as Karl Mannheim or Ernst Bloch. Precisely here, in the central claim to the "transcendence of existence" or the transformation of the "condition humaine"—in the sense, broadly speaking, of Bloch's hoped for and postulated utilization of the "not yet" actualized "potential" of humanity and the corresponding "potentiality" of nature—the presumptuous and thus dangerous dimension of the "utopian intention" is to be seen. Today, with reference to this intention (just as earlier and similarly at the time of the speculative remobilization of early Christian "chiliasm" by Joachim of Fiore and the Franciscan spiritualists, leaving aside the later "fanatics"¹²) there also takes place the alliance of the orthodox theology of original sin and the *other-worldly* realm of God with the defenders of "institutions" and also with the proponents of the "constraints of the actual" and the really "do-able" who see the "condition humaine" represented in the immanently measured goals and mechanisms of the process of industrialization.¹³ (Insofar as this is the case, the antiutopian alliance today also surely embraces the pragmatists of "real-existing socialism.")

2. In the concept of "utopia" adhered to by the above characterized ideological-political alliance there is, of course, seldom lacking a connotation that in fact indirectly creates the connection between the critique of "utopianism" with the literary concept of utopia. This is that the person who cannot come to terms with the "condition humaine"—or, in modern parlance, is overtaxed by the adjustment and learning constraint of the process of technical-industrial progress—hankers after a pipe dream similar to that of the literary utopia (or, indeed, after the kind of myth of the "golden age"). The dangerous aspect of the utopian problematic is thus seen to rest upon the combination of escapism and—possibly terroristic—activism; or even more precisely, upon the fact that the fantastic conception or description of a possible alternative world rests upon simplifications that follow from an underestimation of the complexity of conditions of life that are actually possible. In fact, the same is also seen to hold for the fictional-literary utopia which, however, compared with the political and social-philosophical program of utopia, appears to be relatively harmless—similar to a left-wing literary essay, compared with left-wing ideas in the political, editorial, or business section of a newspaper.

3. The concretization of the contemporary critique of utopianism refers primarily to the *utopia of socialist society*. In so doing, it assumes a tradition of utopia that reaches back through Marx and the early socialists also to Thomas More's *Utopia* (and, in the sense of a socialism of the ruling class, even to Plato as well). Beyond this, it also reaches back to the "alternative forms of life" of the monastic orders and those Christian sects that were based upon the communal property of the Christian primitive communities. Yet the present critique of utopianism does not in fact arise out of the self-understanding of the socialist and especially the official Marxist tradition with regard to "utopia." Indeed, whereas the early socialists already viewed their conceptions as *realizable* and therefore no longer "utopian" and Marx and Engels completely distanced themselves from the "utopias" of the early socialists in the name of "scientific socialism," almost the whole of the present-day Western critique of utopia sees in Marxism and neo-Marxism (and

even, indeed, beyond this, in the bureaucratic socialism of the welfare state) a contemporary representation of a dangerous social utopia.

This indicates that the *Enlightenment's idea of progress*—at least the idea of the *triadic historical dialectic* that was inspired by the ideal of perfection that anticipated a transcendence of all institutionally and class-determined division and alienation between human beings and within human beings themselves—is in no way to be understood as the transcendence of the utopian intention but rather as the realization of its possibility. At times, the secular-theological or morally oriented notion of progress of the bourgeois Enlightenment—e.g., of the Freemasons, of Lessing and Kant—is already interpreted as the beginning of a utopian questioning and ultimately dissolution of the autonomy of politics effected in "absolutism" and of the ideologically neutral state of peace thereby attained.¹⁴ The present-day critique of utopia assumes, in any case, that the literary-fictional spatial (or island) utopia of the sixteenth and seventeenth centuries first really displayed its practically significant seductive potentiality through its transformation into a realizable temporal or future utopia.¹⁵

4. From the very outset, the tradition of the socialistic-communistic social utopia is viewed by the present-day Western critique of utopia in connection with the *utopia of totalitarian planning and organization*. In so doing, the conceptions of Plato, Campanella, and Marx or Lenin are set alongside one another—roughly as an alternative to the idea of the "open society" in Karl Popper's sense. Even the program of eugenic human selection that is to be found in Plato and Campanella—not to mention in National Socialism—belongs as part to this image of utopia. Constitutive for utopian thought is assumed to be a conception in which no natural diversity and contingency of individual life or the cultural spheres or subsystems of society is tolerated—for example, no separation of the public and private spheres of life. What is here taken to be the utopian intention is the outline of a socialized life in which everything is conceived in its interdependence with everything else and is rationally construed from a unified plan. Thus, for example, politics, law, the economy, work, recreation, culture, science,

and, not least, sexuality, procreation, and education are conceived as functionally integrated components of a societal reality that is made by human beings and hence also regulated by them.

5. To the extent that the *utopia of social planning and organization* rests upon rational construction and regulation, the critique of this utopia can also have recourse to the relevant outlines of a *scientific-technical utopia*: for instance, to Descartes's and Bacon's program of a "regnum hominis" by means of scientific-technical domination over nature and, above all, to the *technocratic* application of this program to society since Saint-Simon.¹⁶

The dimension of the current critique of utopia just indicated gains its particular significance as well as its problematic from the fact that it is directed equally against the socialism of totalitarian planning in the East as well as Western industrial capitalism and it does so on the basis of the presupposition that not only the conscious utopia or scientific utopia "transcendence" of the former but also the unconscious utopia of the latter are to the highest degree "questionable." Let us seek to elaborate this more precisely.

It is not difficult to demonstrate that the Marxist social utopia, in which human beings in the classless society no longer suffer history but *make* it in solidaristic action, is to be understood as the integration of the scientific-technological-technocratic utopia of Bacon or Saint-Simon. Indeed, the Marxist thesis of the scientific "transcendence" of utopia rests upon the utopian scientism of the "unconditional" prognosis of history.¹⁷ But it is precisely this utopian scientism that contains the central paradox of the integration of the technocratic utopia in that of the emancipation of human beings. For the conception of the release from political domination by means of the "administration of things" (Saint-Simon) or the self-identification of the politician as "social engineer" (Lenin) presupposes that human beings in the "realm of freedom" will be both autonomous *subjects* and regulatable *objects* (quasi-objects) of prognoses and planning.

Yet already in the "realm of necessity"—i.e., in the development of capitalist society that belongs to "prehistory"—hu-

man beings are, as has been shown, at least the subjects of their actions to the extent that their reaction to prognoses—known to them!—of their behavior cannot be predicted (see the phenomena of the "self-fulfilling" and "self-destroying" prophecy analyzed by Merton).¹⁸ And the nonfulfillment of Marx's long-term predictions (e.g., the immiseration of the proletariat and the disappearance of the middle classes) basically rests upon the diverse reactions of human beings to the predictions (e.g., self-organization of workers in trade unions, sociopolitical reforms and economic policy in the sense of state interventionism). Yet, on the other hand, it has become apparent that precisely the first step in the direction of the "realm of freedom" in the sense of the total planning of society—the socialization (for which read state ownership) of the means of production and the seizure of central economic and political control of the worker through the "Party" as the subject of history—has reduced the broad masses of the population largely to mere "objects" of social engineering. And since then there seems to remain open to "real existing socialism" only the way towards "technocracy," which means not the supersession of political domination by the administration of things but by the administration of human beings as quasi-objects. Such a fate for state socialism was already predicted by Max Weber and thus, very soon after the seizure of power by state socialism in Russia, the so-called negative or antiutopias were depicted—in the East, for example, in Samjatin's *Us*, in the West in Huxley's *Brave New World* and Orwell's *1984*. Precisely this development seems to be a consequence of the unseen *subject-object-dialectic* of the linear extension of the scientific-technological utopia of the domination of human beings over nature by means of the technocratic utopia of the domination of human beings over human society as quasi-nature.¹⁹ To this extent, however, the intellectual coercion of the application of scientific-technological categories—of mathematical calculation, or universalization in the sense of exchangeable qualities and functions²⁰—to human beings is also effective in Western industrial society, restrained only by the political rights to participation by individuals and their—skillful or unskillful—practice in forms of communication and interaction that cannot or

may not be replaced by automatable (formulable in computer language) acts of bureaucratic administration. What is decisive for the competition between the two major types of modern industrial society seems to be the question as to whether long-term planning of the technocratic type can be replaced by a dialogical type. For a radical alternative to so-called "social technics," which rests upon the calculability of human behavior on the basis of quasi-nomological prognoses and thereby upon a tendential "reification" of human "quasi-nature" by technocrats, can only be conceived of if long-term planning were possible on the basis of the ascertaining of human behavior by the constantly renewed consultation and agreement of all mature acting human subjects.

Measured in terms of social reality, however, the above alternative to technocracy itself seems, in turn, to be utopian. In fact it oversteps precisely that concept which appears to most social policy makers in Western industrial society as a ready-to-hand alternative to totalitarian technocracy: that which Karl Popper, in his critique of the "utopian social technology" of Marxism-Leninism, has propagated as "piecemeal social engineering."²¹ According to this critique, the error of "utopian social technology" (of historicist planning) lies above all in the fact that it does not match the natural scientific method precisely enough to social reality. Instead of making, on the basis of the laws of movement of history, "unconditional predictions" concerning the irreversible course of history, the social sciences, just like the natural sciences (through "initial conditions" and "laws"), should provide "conditional predictions" that enable them to be tested through social experiments and so, through "trial and error," learn from history. Aside from this, according to Popper, social policy requires an *ethical* orientation that cannot, as in a historicist Marxism, be replaced by the "ethical futurism" of pre-given scientific insight into the necessary course of history. The ethical orientation, that is, the evaluation of positive or negative consequences (and "auxiliary consequences"!) of sociotechnical measures should not be determined in a utopian manner—i.e., by a long-term goal strategy in the sense of the teleology of human happiness—but rather

from case to case in the removal of social injustices in the sense of avoidance of distress.

There is no doubt that this conception, especially in its second partial aspect, approximates very closely the immanent logic of the representative democracies and their social policy and therefore can be taken as broadly accepted in modern industrial countries. Nonetheless, it is questionable whether it is in a position to bring under control the already mentioned dangers of an unconscious utopian anticipation of the future, that (also) seems to occur in the industrialization process of Western capitalism, in such a manner as is necessary in the age of ecological crisis.

In the first place, it seems to me that the first partial aspect of the Popperian conception, the recommendation of "piecemeal social engineering" on the basis of "conditional predictions," itself seems to be still imprisoned unwittingly in the subject-object-dialectic of the scientific-technological utopia. For, as Popper himself has recognized, it is in principle impossible to predict, for instance, the process of the progress of science because each prediction enters through self-reflection into this process and transforms the preconditions of the prediction in an irreversible form. This also implies, however, that—at least with regard to all social transformations that are mediated through public discourse and thereby also through the results of science—no "conditional predictions" in the sense of replicable natural scientific experiments are possible. To this extent, too, learning from history in the sense of "trial and error" is not really possible, but rather learning in the sense of ever-renewed but never strictly replicable attempts at the critical reconstruction of unique historical processes as a process of progress, as is attempted, for instance, in the history of science and other reconstructions of processes of rationalization. Thus, something like highly problematical *predictions* can exist in the historical realm only in the form of *extrapolations of trends*, on the basis of genuine natural laws and ad hoc plausible (but not verifiable in replicable experiments) hypotheses concerning human behavior on the basis of nonfalsifiable hypotheses about principles of rationality (see, for example, the

models of world development by the "Club of Rome" and *Global 2000*).

Yet if this assessment of the first partial aspect of the Popperian conception is correct and if, on the other hand, the historicist claim to unconditional historical prognoses—and that means the scientific "transcendence" of utopia through the philosophy of history—is decisively rejected by Popper, then the burden of *ethical* responsibility for the consequences and side effects of human collective actions is strengthened in a dramatic manner. This is true, for example, at the present time, for the industrialization process and its consequences for the human biosphere and for the collective life of diverse peoples and cultures in the realm of the threatened biosphere.²² If it is not possible to gain increasing knowledge of the desirable and undesirable consequences of collective actions in replicable social experiments; if ultimately an irreversible process must be assumed in which all predictions are themselves included, then it does indeed seem highly doubtful whether the "ad hoc" identification of particular *grievances* by those affected in different countries—in practice in Western democracies by potential voters—suffices, in order to make available normative standards of critical judgment upon the irreversible industrialization process as a whole. Is not a constant normative-ethical standard for the constantly renewed attempts at reconstruction of the civilization process and the critical judgment upon its immanent goals required? Stated differently: must not the spontaneous evaluation of the consequences and side effects of social policy in diverse countries itself still be discursively justified—in the sense of a macroethics of the possible survival and collective life of diverse peoples and cultures?

6. In my opinion, the dilemma of the scientific-technocratic subject-object-dialectic just outlined is a central motif in the deviation of Western *Neo-Marxism*—especially that of Herbert Marcuse and the Frankfurt School—from orthodox ("objectivistic") Marxism-Leninism and, over and above that, the (in Horkheimer and Adorno often very pessimistic) diagnosis of the "dialectic of Enlightenment" in modern industrial society as a whole. In terms of the philosophy of science, the deviation

of the Frankfurt School from "objectivism" found its later expression in the so-called "positivism dispute" in German sociology.²³ For in this dispute, what was at issue was not really the false and hardly decidable question as to whether Karl Popper, contrary to his own self-estimation, was to be counted as a "positivist." Rather, from the Frankfurt School side, the issue was the uncoupling of the justification, on the basis of the philosophy of science, of a "Critical Theory" of the historical-reconstructive social sciences from the scientific program—determined by a technological interest—of nomological explanation and prediction of natural and social processes. This program had, as has been suggested, dominated orthodox Marxism and the older positivism and was continued, it seemed, by Popper and Albert under the label of a "unified methodology of the empirical sciences" (although, ironically, Popper and Lakatos, under the influence of the debate on the history of science, undertook at that time decisive steps towards the destruction of the program of a unified methodology).²⁴

At that time, under the growing influence of Jürgen Habermas, "critical theory," in association with the hermeneutic tradition and the "pragmatic turn" in the analytical philosophy of language, began to consider a normative dialogical-communications theoretical foundation of the reconstructive social sciences and, what was much more difficult, the democratic organization of social practice. And in this context, the concept of an ethics of the "ideal speech situation" or the "ideal community of communication" was also developed by Habermas and the author of this study.²⁵

In the context of our question as to the concept of utopia held by the contemporary critique of utopianism, however, it must be emphasized that the no-longer scientific-technocratic neo-Marxism—primarily of Bloch and Marcuse, but also Habermas—stands much more in the center of the critique of utopianism than does orthodox Marxism. Indeed, in certain circumstances, there exists an agreement between bourgeois-conservative critics of utopia and adherents of "real existing socialism" with regard to the negative assessment of the "new utopianism," of its "lack of realism," of its failure to appreciate the ordering function of the state and institutions, and possibly

its dangerous nature as a fanatical ideology that provides encouragement to terrorism.²⁶ How is it possible to render this phenomenon intelligible?

On the one hand, one must return to the presuppositions of the contemporary neoconservative pragmatic critique of utopia, which converge in a remarkable manner in both the West and the East. On the other hand, one must consider the distinctive background of ideal and traditional-historical motifs that have led to the revival of the utopian dimension of Marxism in the work of Bloch, Marcuse, and, finally, of Habermas.

Let me make a few comments on the first suggestion. At the present time, it is no longer the case that the conservative status quo notion is opposed in every respect to the idea of progress. Rather, there exists today in both the West and the East a status quo notion held by so-called pragmatists, which absolutizes a norm of progress that is dictated to us by the so-called "factual constraints" of what is technically and economically feasible. This quasi-automatic and system-immanent progress of modern industrial society is today in fact taken to be the *realm of what is actually possible*; and, accordingly, any person is taken to be a utopian who—for example, in the light of the ecological crisis—believes it to be possible to break out of the general direction of things, in order perhaps to express through public discourse possible goals that are not pre-given as self-evident goals by the industrialization process.

At this point, I come to the second suggestion with regard to the specific grounds for this critique. It is indeed worthy of note that in neo-Marxism—for instance, in the work of Ernst Bloch—the line of tradition of the secularization of Judeo-Christian eschatology in the sense of speculative chiliasm—from Joachim of Fiore and the Kabbala up to German philosophy of history since Lessing—at least inspires Bloch's "Principle of Hope," much as the line of tradition of the rational social utopia was once traced by Karl Kautsky from its "transcendence" in Marx through the early Socialists back to Thomas More.²⁷ And with this general accentuation there was associated in Bloch's work—but also in that of Horkheimer, Adorno, and Marcuse, as well as Benjamin—the acknowledg-

ment of a messianic-utopian hope that had by no means been scientifically "transcended" by Marx.²⁸

The contemporary critique of utopianism has also finally discovered in Marcuse and even Habermas the Achilles heel of the chiliastic, fanatical tradition and thereby a secularized eschatology. In what follows, I cannot go more fully into Herbert Marcuse's utopia of "liberated existence," tinged by anarchistic-erotic and depth psychology elements. I must restrict myself to the conception of Habermas, who from the beginning sought to understand the scientifically "untranscendable" eschatological-utopian "surplus" of Marx's doctrine as the "postulate of practical reason" derived from Kant.²⁹ In fact, with Habermas the neo-Marxist problematic of the foundation of the philosophy of history—or, more accurately, the critical reconstruction of social history from a practical standpoint—took on that turn which allowed the problem of *ethics* to step into the foreground. Accordingly, in recent times, the critique of utopianism has directed itself against a specific conception of ethics which both Habermas and I basically adhere to. I wish to term it—in my terminology, and in the sense of a formulation that is indeed provocative for the critique of utopia—the ethics of the "ideal community of communication."

With regard to Habermas, the critique of utopianism has focused above all upon the formula of "domination-free communication" in the sense of the formation of a consensus through the unconstrained constraint of argument in discourse³⁰; with regard to my own contribution above all upon the claim that the ethical basic norm—in fact, the principle of the formation of a consensus concerning norms in the argumentative discourse of an ideal community of communication—proves itself to be indisputably valid (binding) in the sense of a transcendental-pragmatic ultimate justification.³¹ Against both aspects of the ethics of communication there is characteristically directed not merely a specific charge of utopianism but, in association with it, the professed suspicion that the adoption of such an ethics, and even the claim for its ultimate justification, amounts in practice to a kind of Robespierrian terror of the ideal. What is said to be ignored here is the fact that, in a pluralistic, liberal-democratic social order,

the “social validity” of norms must be a matter of *institutionalized procedures of enactment*. Over and above the recognition of the results of such procedures, in a democracy the recognition of norms—that is, moral as distinct from legal norms—and equally of religion must, in contrast, be a matter of conventional traditions voluntarily adhered to or, in the last instance, of private decisions of conscience. Because of this, in a democratic social order there can and should be no demand for the intersubjectively valid, discursive-ethical legitimation of legal institutions and procedures for the enactment of norms. And least of all can there or should there exist the state of affairs in which one part of society—namely, (Left) intellectuals—arrogates to itself the ideological-critical questioning of the “communicative competence” of the other part of society, for instance, that of the representatives of the “military-industrial complex.”

What can we reply to these objections? Stated more generally, and in the sense of our presentation of themes: How does the ethics of the discursive-consensual justification or legitimation of norms and its conception of the ideal community of communication or domination-free discourse relate to the human utopian intention and to the critique of utopianism?

III The “Ethics of the Ideal Community of Communication” as the Partial Justification of the “Utopian Intention” and the Postulate of a “Critique of Utopian Reason”

Since what follows deals with a discursive endeavor—the defense of the ethics of discourse—I wish from the outset to provisionally clarify one point that refers to the status, rights, and duties of participants in discourse (for instance, philosophers, scientists, journalists, critics of “utopianism,” and defenders of the “utopian intention”). They are all—and that includes the critics of utopianism, who defend the state and its institutions against “intellectual fanatics”—representatives of the “reasoning public sphere” (Kant, Frederick the Great), and as such they can place in question and ground (justify) norms and institutions through rational arguments, without such

metainstitutional critique or legitimation directly acquiring *political-legal validity (force of law)*. This does not mean, however, *that the arguments could not be intersubjectively valid or invalid*; otherwise it is evident that the arguments of antiutopian defenders of institutions must also from the outset be meaningless.

To this extent, it must be conceded from the start that there exists an (esoteric?) sense of *intersubjective validity* with regard to the justifiability of norms that neither coincides with the legal validity nor can be traced back to the conventional validity of traditions or to private decisions of conscience. In contrast to a decisionistic formulation, the latter have nothing at all to do with the justification of the possible validity of norms, but rather only with the observation or nonobservation of norms, about which of course it must be decided even if a discursive consensus cannot be reached on the basis of rational arguments as to their validity. However, the *conventional validity* of norms on the basis of traditions is always already placed in question in principle, once the problem of the justification through rational arguments is raised at all. And this cultural turning point—the philosophical enlightenment in Greece—is even necessarily presupposed for his arguments by the defender of the unquestioned validity of archaic institutional norms, as, for example, in the case of Arnold Gehlen.³²

Now at the present time, what is the relationship of the (esoteric) *validity of rationally justifiable norms* to validity in the sense of *legal validity* (on the basis of institutionalized procedures for the justification of norms) and to the social validity of norms?

Hermann Lübbe, a critic of the utopian ethics of discourse, equates the latter with *legal validity* and reduces the rational justification of the validity of norms either to state-institutionalized procedures of the justification of legally binding norms or else—as is apparent in the relatively legally free realm of international politics—to the procedures for the effective negotiation of treaties concerning norms (e.g., such as whale catch quotas between interested states).³³ One readily notices that in this manner the “esoteric” question regarding the *rational justification or legitimation* of norms in the sense of a philosophical

ethics is well and truly “dissolved,” i.e., should be recognized as an illusory problem. More precisely, as long as harmless esoteric thinkers (or else not completely harmless utopians, who place institutionalized procedures in question on the rational and international level, and in this manner lay the foundations at least for uncertainty) do not raise the question of justification or legitimation with reference to norms, these questions are solved “in a trivial manner” by procedures that are of a purely “technical-instrumental” nature.³⁴ Thus, as soon as those interested in the justification of norms (such as party members in a parliament or the opposing parties to a foreign policy conflict of interests) have agreed upon a common “higher goal,” “instrumental reason”—apparently unjustly criticized by the Frankfurt School as insufficient—offers rules as to which norms are appropriate and thereby rationally binding with reference to the presupposed “higher goal.” How does the ethics of discourse that stands under the suspicion of esotericism and utopianism reply to this sobering analysis?

Let us begin with the institutionalized procedures for the justification of norms upon which the internal political *legal validity* of norms rests. Can the latter—in contrast to the *rational justification* of norms—be equated with *social validity*? One could answer this in the affirmative if one took the functioning legal-constitutional state for granted or self-evident, as may perhaps be the case from the West German perspective (cases of house occupations and other citizen initiatives notwithstanding). But with regard to most presently existing states, the sociologist is justified in distinguishing sharply between the positive *legally enforced* norms and *socially valid*—i.e., enforceable or accepted as valid (even though not always followed)—norms. Yet the significance of this difference in most instances may lie in the fact that it throws up the in no way trivial problem of the *legitimizability* (i.e., justifiability in the sense of capable of reaching consensus) of norms enforced by positive law (or the institutionalized procedures for justification).³⁵

But here we come to the ethical problem of the *rational justification of legal norms*. Is the procedural rationality presupposed here in Lübbe’s sense sufficiently explicated by the effective agreement of transacting partners—party members in

parliament or representatives of states—upon a common higher goal?

It is worth considering that the procedural-rationality of consensus formation outlined above can also be followed by a mafia, where the common higher goal of the opposing parties might be the undisturbed transaction of the drugs trade. This should not be taken to mean that the successful political negotiation of agreements does not frequently follow the pattern suggested by Lübbe.³⁶ What must be disputed, however, is the fact that this pattern of consensus formation is already that of *ethical reasoning*. More accurately, one could say that what is at issue is a pattern of the *strategic rationality* of the successful pursuit of interests, insofar as this can be achieved not always through the struggle of competitors but often more readily through (at least partial) cooperation.³⁷

Yet is not the procedure of *strategic cooperation* the sole realistic form of consensus formation? And is not any attempt to postulate a procedure of consensus formation that would exclude the outlined instance of the mafia, *utopian* in the sense of the unrealizability and potential damage to the life-interests of those concerned? I believe that this question expresses the deepest doubts of the so-called pragmatists or political realists against the ethics of the ideal community of communication. Indeed, it is no coincidence that the suggested pattern of justification of norms through the negotiation of a contract may be traced back to Hobbes’s model of the justification of the legal state by the social contract of human “wolves”—to a model in which the moral rationality of “natural laws” leads back to the strategic and instrumental rationality of fully calculated self-interest.

Would not such procedures exhaust the capacity of human rationality—against Kant’s supposition that reason is to be viewed as a capacity for moral legislation opposed to natural self-interest and to a certain extent transsubjective? One must concede to the political realist at least this much, that a responsible politician—and this means a person who stands for a system of self-assertion whether it be an individual, a family, a group, or a state—can hardly ever reckon with the fact that an opposing party follows Kant’s “categorical imperative” and, for

example, never lies. Thus, does he not at least in practice *also* have to act *strategically* and in any case may not act in the sense of that rigorous recommendation of Kant according to which it is forbidden “out of love of humanity” to deceive a possible murderer about the victim sought by him?³⁸

Before we attempt to answer this question, it seems necessary to state clearly why it is that an ethics of the ideal community of communication cannot recognize as ethically satisfactory the Hobbesian or Lübbe’s model of the justification of norms by the agreement of interested parties. In my opinion, there are three grounds to be mentioned, all of which indicate the distinction between *consensual-communicative discursive rationality* and *strategic rationality*.

1. The most basic reason refers to the *strategic, thoroughly calculated self-interest as motive*. Under specific situational pre-suppositions, but not in principle in instances of conflicts of interests, an agreement indeed recommends itself in the sense of equalization of interests. For this reason, the Hobbesian human “wolf” does indeed in general have an interest in a legal state (e.g., in the fact that all laws are followed), but cannot in principle be induced to abandon, in the conclusion of an agreement (e.g., contractual agreement), his criminal reservation that counsels him, as the opportunity arises (if no sanctions are to be feared), to dispense with adherence to the contract and thus to extract the parasitic “surplus” advantage from the functioning legal order.

2. The second reason lies in the rejection of the (strategic) *transaction* model as such. According to this model, it is indeed perfectly possible to go back to common higher goals and thereby to find a basis for an agreement on norms that lies in the interest of all participants. In so doing, however, it is not the ethical *normatively justifying principle of the argumentative universalization of interests* that is followed but rather, in the context of all strategically effective offers of negotiation (and threats with negative consequences), the reflection upon common higher goals plays an effective role. In short, what is at issue is a *strategically settled compromise of interests*.

3. The third reason refers to the *consequences of the difference between the ethical principle of the universalization of the interests of*

all those concerned and the strategic principle of the ad hoc compromise between the interests of conflicting parties. In the first case, an agreement of conflicting parties at the cost of a concerned third party (as in the case of the mafia) is strictly forbidden; in the second, on the grounds of the effectiveness of transactions, it is in fact recommended.

In my opinion, this indicates that the transaction model of ad hoc agreement concerning instrumentally expedient norms has nothing at all to do with an ethical principle of normative justification (or legitimation), since—on the grounds of self-assertion and effectiveness—it avoids having to go back to a strict *transsubjective universalization principle*. Such a principle, however, was first stated by Kant in the “categorical imperative” as a principle of ethics; and the consensual-communicative discursive ethics views the Kantian principle as the formal internalization of the principle of *universalized reciprocity* which requires that concrete norms be justified where possible by an *agreement* (informational and argumentative mediation) upon the *interests of all those concerned*.

From this confrontation of discursive ethics with the rationality of strategic transactions one thing becomes immediately clear: If the rejection of the strategic model of agreement were to be utopian, then this must hold, interestingly enough, for the specified principle of ethics as such.

In this manner, we have reached a dialectically salient point in our discussion of the relationship between *utopia* and *ethics*. For the question now arises as to whether the specified principle of ethics itself proves to be untenable because of utopianism or whether—independently of the charge of utopia, which of course itself still requires clarification as to its meaning—it can be justified as binding by rational arguments. If the latter were to be the case, then this would mean at the same time that utopia—more precisely, a specific form of the human *utopian intention*—can be justified as being unavoidable and indispensable.

Yet how is the already indicated principle of ethics—the strict transsubjective principle of the universalized reciprocity of an unlimited ideal community of communication, in which all differences of opinion are to be resolved (only) by the forma-

tion of a consensus on the basis of the unconstrained constraint of arguments—to be *justified* by rational arguments?³⁹ Is not the specified principle already presupposed in any serious argument—thus also in solitary thought, insofar as it is to be intersubjectively valid—as the normative precondition for the possibility of an ideal discourse? Yet if this is the case, then the principle can obviously not be *justified*, without itself already being presupposed in a *petitio principii*. In short, it seems as if the rational justification of the principle of ethics must founder on the fact that any rational final justification leads into a logical trilemma: either (1) into an *infinite justification regression*, insofar as each principle of justification must itself again be justified, or (2) into a *logical circle* (*petitio principii*), in that the principle that is to be justified is already presupposed in its justification, or (3) into a dogmatization of a principle (axiom) that one is not prepared to justify any further.⁴⁰ (The latter seems to happen in the case of Kant who, in the *Critique of Practical Reason* abandons as impossible the attempt at a deductive justification of the moral law [through the transcendental deduction of freedom] and characterizes “the moral law” as “a fact of pure reason, of which we are *apriori* conscious and which is apodictically certain”).⁴¹

It is true that the principle of ethics that we have introduced is already presupposed in every serious argument; and, accordingly, it can itself not be *justified* if, as is usual, one understands by “justification” a “proof” in the sense of mathematics or of logic (*deduction* of propositions from propositions in an axiomatizable syntactical-semantic system or *induction* of general propositions from particular propositions or, more generally, of propositional predicates from sense data). In this case (i.e., in each case in which *justifying* means *deriving something from something else*) there emerges with analytical necessity the already indicated logical trilemma of final justification. Yet, in a deeper sense, this is precisely dogmatic (and rests upon a *petitio principii*): to establish in the suggested sense the concept of philosophical *justification*, and this means, to assume from the outset that each justification must result from derivation from something else.

In the case of the necessary presupposition of the basic principle of discursive-consensual ethics of communication by each serious argument, the *philosophical final justification* of the principle of ethics lies precisely in the (reflexive) *untranscendability* of serious argumentation (and thereby also of the normative-ethical principle of discourse) for those participating in argumentation and thus, in a certain sense, in the reflexive self-ascertainment of reason.⁴² The fact that the normative principle which is necessarily presupposed in all argumentation cannot be *logically proven* without a *logical circle* (and hence not without a *petitio principii*), in this case takes on a completely new and unusual significance. It is no longer interesting merely as an indication of the failure of a logical proof but rather as an indication of the fact that the principle which is presupposed, just like the argumentation itself, is unavoidable. For the unavoidability of the logical circle in a logical proof follows in this case from the—not syntactical or semantic but—*transcendental-pragmatic* (i.e., reflexively observable for the subject of argumentation) necessity of the presupposition of the principle in question. In short, what is decisive in this case is not the well-known impossibility of a *noncircular final proof*, but rather the fact that the principle in question *cannot*, without the *pragmatic self-contradiction*⁴³ of those who are participating in arguing, be disputed as such a principle (i.e., *not without inconsistency between the act of assertion and the asserted propositions*, as, for instance, in the propositions expressed in “I hereby assert that I do not exist” or “I hereby assert as true [i.e., intersubjectively valid], that a consensus regarding that which I assert cannot be expected in principle” or else, “I hereby assert as true that I am not obliged in principle to recognize all possible members of the unlimited community of argumentation as having equal rights”).

Here in fact a—constantly blocked—line of tradition of the *philosophical final justification of principles* is indicated that reaches from the *elenchi* of Socrates and Aristotle via the—apparently metaphysically-psychologically relevant—refutations of the skeptics by Augustine and Descartes down to the—still methodically-solipsistically abbreviated—insight of Kant into the necessity of the presupposition of “I think” for all objectively

valid knowledge.⁴⁴ This line of tradition of reflexive final justification reaches its explicative self-transparency only in the transcendental-pragmatic reflection upon the indisputable claims to validity of speech (*intelligibility* of an intersubjectively valid meaning, *truthfulness* of speech as a subjective expression, *truth* in the sense of an in principle universal propositional content capable of consensus and *correctness* or normative justifiability or legitimizability of speech as social communicative action). It now first becomes clear that—due to the necessity of the unlimited sharing of linguistic meaning and truth in the sense of intersubjective validity—the presupposition of “I think,” which is unavoidable for theoretical arguments, is not to be separated from the ethical-practical presupposition of recognition of the norms of an ideal community of argumentation. In short, along with the overcoming of “methodical solipsism,” final justification as the reflexive self-ascertainment of the unity of theoretical and practical reason becomes possible.

Yet what follows from this line of argument for the possible justification of the human *utopian intention*? First, one might be inclined to limit its scope from the perspective that is critical of utopia in the following manner: The indisputable necessity of recognition of the outlined principle of ethics, so one might argue, refers only to a *special ethics of discourse unburdened of action*, in which the interest of reason in the redemption of the validity claims of speech becomes separated in an artificial imputation from the strategic-practical human interests of self-assertion (or the systems of self-assertion with which they are linked). Hence, so one might infer, it would be utopian in a questionable sense to derive an appropriate ethical obligation with regard to the life situation of practical conflicts of interest outside argumentative discourse from the recognition of discursive ethics. Indeed, the possible practical conflicts of interest among discursive interlocutors that exist independently of their interest in the redemption of validity claims, are, according to this objection, not at all affected by discursive ethics.

What seems to me to be correct in this argument is the following: The argumentative discourse—whose constitutive idea for philosophy and science in the West goes back to Soc-

rates who contrasted it with the rhetorical discourse of the Sophists—in fact rests upon an idealization in the sense of the separation of *consensual-argumentative and strategic rationality*. This separation is not characteristic of human forms of communication prior to and outside the introduction of argumentative discourse and itself remains, for the discourse which it constitutes as an institution, “a regulative idea to which nothing empirical can fully correspond” (Kant). Yet from this state of affairs it follows in no way that the ethics presupposed in argumentative discourse is not binding for the settling of practical life conflicts. For the following too is always already presupposed a priori by every person who seriously argues (and this means, even those who merely raise a relevant question): namely, that under the normative conditions of an ideal community of communication, discourse is not merely one possible “language game” among others but rather, as the only conceivable instance of justification and legitimation, is applicable to disputed claims to validity in all possible language games.⁴⁵

Thus, if, in cases of dispute over normative claims to validity in the context of conflicts of interest, a *rational redemption of justified claims* is to be achieved at all (and not merely a “solution” in the way of a transaction or open conflict), then discursive ethics must also be recognized as the basis of consensus formation regarding disputed norms. (This fact, however, that not a strategic but an argumentative-consensual solution should be achieved was always already recognized by those who raised the question as to the binding nature of an ethics!)

Of course, it would be utopian in a pejorative sense, namely incompatible with an “ethics of responsibility,” if those who in a real life situation are responsible for a system of self-assertion—such as the politician in particular, but virtually every person—were to overlook the distinction between life-practice and discourse unburdened of action and without further ado to assume that their opponents (who likewise are tied to systems of self-assertion) will follow without reservation the basic norm of discursive ethics. Even if two responsible politicians have fully recognized in good faith the binding nature of discursive ethics, they—as representatives of different systems of self-assertion—cannot know this with certainty of each other and

thereby reckon upon it. In this fact consists the *basic paradox of political ethics* (e.g., of disarmament negotiations): it rests upon the distinction and the never fully transcendable tension between *ethical* and *strategic* reason (*rationality*).

Accordingly, ethics seems to be fundamentally distinguished from utopia in the following manner: ethics, like utopia, commences from an *ideal* that is distinguished from existing reality; but it does not anticipate the ideal through the conception of an empirically possible alternative or counterworld; rather it views the ideal merely as a *regulative idea*, whose approximation to the conditions of reality—e.g., discursive consensus formation under the conditions of strategic self-assertion—can indeed be striven for but never be completely assumed to be realizable.

Although this *disjunction* between ethics and utopia is certainly not false, yet it does not do complete justice to the internal connection between both phenomena. The ethics of the ideal community of communication can in fact not be *satisfied* with viewing its ideal as a “regulative idea” in Kant’s sense. In effect, everyone who engages in serious argument—and even before that, who communicates with other people in the sense of a possible redemption of validity claims and who assumes others and themselves to be responsible⁴⁶—must *anticipate* as an *ideal state of affairs* and assume as fulfilled in a certain manner, counterfactually, the conditions of an ideal community of communication or an ideal speech situation. (At best, this is attested to through the pragmatic self-contradiction of a speaker at a discussion who attempts with increasing eagerness to convince his public of the contrary, as through the statement, “We must in fact all concede that we are in principle not in the position of abstracting from the individual peculiarities and shortcomings of our existence.”)

Such a phenomenon seems to render transparent the most basic connection between *ethics* and *utopia*—and that also means, between *reason* and *utopia*. The connection is evidently one that is embedded in the “condition humaine” as unavoidable. Human beings, as *linguistic beings* who must share *meaning and truth with fellow beings* in order to be able to think in a valid form, must at all times *anticipate counterfactually* an *ideal form of*

communication and hence of social interaction. This “assumption” is constitutive for the institution of argumentative discourse; but even before this, the human being as a linguistic being can never maintain a purely strategic relationship to his fellow beings as was nonetheless presupposed, for instance, in the Hobbesian “state of nature” as a meaningful fiction. (We have already sought to show that under this fictional presupposition the transition to a functioning legal-constitutional state cannot be conceived, because of the issue of criminal mental reservation.)

In my opinion the transcendental-pragmatically justifiable necessity for the counterfactual anticipation of an ideal community of communication of argumentative consensus formation must also be seen as a central philosophical counter-argument against the theological doctrine of the total depravity of humanity through original sin and therefore against a radical antiutopian position, for instance, of Protestant Christianity. For the *obligation* in the long term to transcend the contradiction between reality and ideal is established together with the intellectually necessary anticipation of the ideal, and thus a purely ethical justification of the belief in progress is supplied which imposes on the skeptic the burden of proof for evidence of the impossibility of progress.⁴⁷

One can interpret this evidence of an inner connection between communicative reason, ethics, and utopia as justification for the indispensability and unavoidability of the *anthropological function of utopia*—i.e., the *utopian* intention in its most general sense. Yet in this case it must also be made equally clear to what extent the unavoidable utopian intention distinguishes itself from the “effusive”—to take up a term from Kant—intellectual form of utopia, which cannot be justified by means of transcendental philosophy.

It is quite correct that in arguing, that is, in serious reflection with a claim to validity, we view the communicative ideal state of affairs not merely as a “regulative idea,” but over and above this must anticipate it counterfactually, and thus to a certain extent assume the formal structure of an alternative or counterworld to the existing reality. But precisely this anticipation does not refer to a “concrete utopia,” whose empirical realiza-

tion one could fictionally conceive of and describe, or could expect as the future emergent state of the world. For it refers only to the *normative preconditions* of ideal communication, whose empirical realization in a concrete society must indeed also be subject to additional preconditions of historical individualization—e.g., concrete institutions and conventions.

Insofar as this is the case, we must to a certain extent pay a price for the philosophical “transcendence” of the object of utopia: this “transcendence” is to be conceived of as both the preservation and negation of the utopian intention, as more and less than a *fictional utopia*. It is more insofar as it assumes not merely an alternative empirical social order but, according to the formal structure, the “ideal” of a community of communication of persons with equal rights; it is less insofar as it does not outline the pragmatic preconditions—e.g., the agreement over rules of procedure, limitations of time, limitations of themes, representation of those concerned by those who possess special role competencies, etc.—under which the empirical realization of the ideal could be conceived.

The fact that the “transcendence” of utopia just indicated is both more and less than a “concrete utopia,” also indicates that, despite the counterfactual anticipation of the ideal, Kant’s basic distinction between the “ideal” or the “regulative idea” and any empirically conceivable realization of the ideal remains valid. In that the normative preconditions of an ideal community of communication become realized under additional preconditions of historical individualization, these realizations in time must, at the same time and necessarily, fall below their normative ideal. The transcendental-philosophical “transcendence” of utopia escapes the *fundamental aporia of any fictional utopia* precisely through this untranscendable difference: that a further development towards the utopian realization of the ideal may not be conceived and, at the same time, must of necessity be conceived.

It seems to me that this antinomy characterizes in particular the aporia of the *utopian-chiliastic* version of Judeo-Christian eschatology and its secularized inheritance in the *speculative philosophy of history*, in which a temporally internal realization of the ideal is presupposed by means of a dialectical law of the

course of history. Such a utopian historical teleology is, on the one hand, affirmed through the ethical transcendence of the utopian intention (as in the sense of Kant’s “philosophical chiliism”)⁴⁸ and, on the other, critically negated. For neither a renunciation of the progressive realization of the ideal, nor the notion of an eschatological verification (or falsification) in time is compatible with the *ethically* justified postulate of progress. Hans Jonas has seen in this a still semitheological or Platonic-metaphysical inconsistency of Kantian philosophy of history in comparison, for instance, with the utopian philosophy of history of Hegel and Marx that he criticizes.⁴⁹ I would prefer to see in this rather a critical differentiation between (1) the *ethical* future dimension of the unconditional *ought*, (2) the *fictional-utopian* future dimension of the *hypothetical possibility*, and (3) the *speculative-historical* future dimension of *predictability* (of *causal and teleological necessity*). However, I wish to confer the priority of critical justifiability unequivocally upon *ethical-deontic teleology*. From its standpoint, the speculative and deterministic philosophy of history must be replaced by the constantly renewed attempt at a *critical* reconstruction of history with a practical intent (i.e., in the sense of its possible progressive continuability). This is the foundation of a “critical theory” of the social sciences.

At this point, it is apparent that the partial justification of the utopian intention through the transcendental-pragmatic foundation of an ethics of the ideal community of communication contains, at the same time, the postulate of a *critique of utopian reason*. In the present study, this program cannot be developed with regard to its quasi-epistemological dimension.⁵⁰ From a purely ethical-political standpoint I wish to offer by way of conclusion an exemplary elucidation in order that the challenge of the critique of utopia, sparked by Habermas’s formula of “domination-free communication,” does not remain unanswered.

IV The Utopia of “Domination-Free Communication” in the Light of a “Critique of Utopian Reason”

The formula of “domination-free communication” represents in a particularly striking manner the *ambivalence of the utopian*

intention that we have just indicated. On the one hand, it expresses an indisputable assumption and an unrenounceable ethical postulate. On the other hand, it can signal a dangerous utopia: an anarchistic and fanatical idea, whose realization must turn into terror and ultimately into totalitarian domination. The criteria for the distinction of both dimensions of meaning supplies, first of all, the distinction that we have just introduced—but which goes back to Habermas—between “discourse unburdened of action” and those forms of communication in which, according to our interpretation, strategic action in the service of systems of self-assertion and consensual-communicative action in the sense of possible argumentative redemption of validity claims cannot be separated from one another.

The notion of “discourse unburdened of action”—which, since the Greek Enlightenment and totally since the West European Enlightenment of the modern period, has become constitutive for the institutions of philosophy, science, and the “rationalized public spheres,” characterized by freedom of opinion and of the press—presupposes indisputably the notion of *domination-free communication* in the sense of the “unconstrained constraint” of arguments. As such, the institution of argumentative discourse has basically overstepped the conception of the redeemability of the validity claims of speech (meaning, veracity, truth, normative correctness) in the framework of conventional images of the world or institutions which could lay claim to a monopoly of interpretation. In this respect, it possesses postconventional and, to a certain extent like language itself, metainstitutional status (its possible function as instance of legitimation for all institutions and institutionalized norms rests upon this).

To be sure, it cannot be disputed that the quasi-institution just outlined has always presupposed for its realization the defensive and guarantor function of state or quasi-state authority. This political support of domination-free communication through functions of authority has, as it were, two sides: one side is the unequivocal task of the state to secure external defense. From this standpoint, discourse, which as such is basically related to an unlimited communication “system,” must at

the same time be treated as the subsystem of a state system of self-assertion that requires guarantee through authoritative power. To this extent, the political function of power—especially that of the enforceability of law—is presupposed in order to approximately implement the ideal consensus of those concerned against the actual consensus of limited interest groups. (Here, the distinctive legitimation of democratic state forms exists in the fact that the actual consensus of the majority of those concerned or their elected representatives which presupposes and results from public discourse, is considered to be a better approximation to the ideal consensus of those concerned than its anticipation through the “enlightened ruler” or an elite). However, leaving aside the support of discourse by state authority, there also exists the necessity for a quasi-political self-realization of discourse through internal self-defense. For the human participants in discourse, who do indeed also represent living systems of self-assertion, must still make the realization of domination-free communication itself dependent on a quasi-function of domination (e.g., those of a chairperson, leader of a discussion, and the like). The necessity for both these functions of defense and support renders apparent the dangerous utopianism of the anarchistic interpretation of the formula of “domination-free communication” and justifies its rejection. The regressive tendency of the anarchistic interpretation rests ultimately upon the confusion of the metainstitutional function of argumentation with the institutional authority function which makes it possible politically. In the illusory attempt to replace the latter by the former, the authoritarian power function of a charismatic leader must ultimately triumph and the revolution of the direct democracy of permanent discussion must terminate in a dictatorship.

Yet the distinction between the institutional power function, which can politically make possible domination-free discourse, and the—in this instance—metainstitutional legitimation function of discourse cannot only serve as a defense against the utopianism of an anarchistic fanatical ideology. It also releases, at the same time, the utopian—in a positive sense (of counterfactual anticipation of the ideal and its function as a regulative idea)—dimension of the metainstitution of domination-free

discourse. In particular, viewed in terms of political history and legally, a revolutionary step with long-term consequences arises out of the fact that a legal-constitutional state as institution establishes a metainstitutional instance of discursive legitimation and critique and itself defends and guarantees the latter.

An important step in this direction was already carried out in the *separation of powers*. By this means, the direct authority function of the *executive* is integrated within the legitimatory institutions of the independent *legislature* (as representation of the people) and of the *judiciary*, which at least approximately embody the discursive principle. For in the democratic procedure of the institutionalized establishment and enactment of laws by majority decision there in no way lies merely a procedure of *arbitrary decision* [*Dezision*], but rather, compared with a dictatorship, at least also a procedure of the investigation and mediation of the argumentatively representable interests of all those concerned. And in the jurisdiction of a modern democracy—especially in the constitutional court—the legislature itself is once more related to an instance of legitimation and critique, an instance that in line with the *natural law tradition* already always presupposes *universal* principles of ethics (such as constitutional and human rights) in the positive law of particular constitutional states.

The relationship of reciprocal determination of the authority function and the critical or legitimatory function that is institutionalized in the separation of powers reveals its progressive possibilities, however, only in the relationship of state institutions as a whole to the metainstitution of argumentative discourse of the “rationalized public sphere.” For in this metainstitution the state creates an instance of legitimation and critique that from the outset transcends and accordingly places in question the distinctiveness of the state as one system of self-assertion among others. Discourse, as it is represented in philosophy, science, and the rationalized public sphere is here always already grounded upon humanity as the substratum known to us as the unrestricted community of communication. And the state, as a distinctive system of self-assertion, has here—already in relation to the supranational church—opened the door to guaranteeing the possibility of a discursive solidar-

ization and thus reasonable identification of individuals with humanity through its particular authority function.

The utopian dimension, in a positive sense, of this reciprocal relationship of particular institution and universal metainstitution becomes apparent in the basic aporia of Hegel's philosophy of the state. In this philosophy, it was indeed Hegel's intention that the *infinite freedom* of the person in the sense of Christian world religion and the *universality* of moral or legal principles of Stoic natural law should be once more “transcended” (following the suggestion of the Aristotelian *ethics of the polis*) in the “substantive morality” (*Sittlichkeit*) of the concrete and particular state—of a system of self-assertion subjected only to the causality of fate and thus of world history as the Last Judgment. This concept was bound to falter on the fact that the Christian freedom of conscience and the universal ethics of the postconventional age (of world religions and philosophical enlightenment) no longer permitted a total solidarization and identification of the person, as in wartime, with a merely particularistic system of self-assertion. This is not to say that war as the self-assertive function of the individual state was already superseded but rather that in this respect too the function of the state comes to require legitimation and must prove itself in the light of universalistic moral principles in the discourse of the argumentational public sphere.

The tension between the universalistic idea of the unrestricted community of discourse and any particularistic system of self-assertion becomes apparent in the tendency towards the *moralization of war*. Conservative intellectuals like to deplore the quite unavoidable transitional stages of this moralization: fanatically led religious wars and later wars between ideologies as self-declared representatives of the universalistic moral principle that stamps the particular enemy as a criminal to humanity. Yet the transcendence of these transitional stages can hardly lie in the return to the unquestioned authority of institutions (Arnold Gehlen), but rather only in the progressive realization of those regulative ideas which Kant specified in the mutually presupposed principles of the *argumentational public sphere*, of *republicanism*, and of the *legal community of world citizens*.

With these three regulative principles of a morally postulated process of progress there are, however, signified three interdependent dimensions of the progressive realization of the discursive principle and thereby domination-free communication as a regulative idea. In the internal state sphere of the present day, what is at issue is the not merely legal but also economic realization of freedom of communication and information mediated by the media, as well as so-called "democratization" and "participation"; in the supra- or interstate sphere what is at issue is the dimension of the replacement of imperialistic and (neo) colonial power politics by a politics of accommodation of interests through "talks" that are similar to discourse.

In both dimensions of the possible transformation of domination into domination-free communication (e.g., of technocratic planning into dialogical planning through advice and compromise), it cannot be a matter in this regard of rendering completely unnecessary the political function of the exercise of power. For the possible transformation of domination, in its empirically conceivable realization, is itself also still dependent upon the exercise of the functions of defense and guarantee in terms of power politics: as, for instance, the internal state democratization and realization of freedom of communication are dependent upon the functions of the constitutional state that are in a position to hold in check the informal power functions of interest groups. Similarly, the interstate realization of the accommodation of interests through "talks" is dependent upon the simultaneous balancing out of strategic equilibrium between the large and small systems of self-assertion.

From the standpoint of a political ethics of responsibility it will thus never be permitted to totally abandon the enforceability of law internally and strategic self-assertion externally. This is ruled out by the difference between the interest in a possible consensus of all concerned and the factual consensus of limited interest groups at the cost of a third party. To this extent, there does indeed exist the necessity of upholding the reciprocal conditional relationship between institutions and discourse and equally between strategic and consensual-communicative action. Yet this necessity in no way contradicts the fact

that responsible politics stands at the same time under the regulative principle of a long-term strategy of the realization of the formal preconditions for an ideal community of communication at all levels of human interaction.

Notes

1. On Thomas More, see T. Nipperdey, "Die Utopie des Thomas Morus und der Beginn der Neuzeit," in his *Reformation, Revolution, Utopie*, Göttingen 1975. See also L. Stockinger, "Überlegungen zur Funktion der utopischen Erzählung in der frühen Neuzeit," in *Utopieforschung*, Frankfurt 1985, vol. 2, pp. 229–248.

2. See K. Mannheim, *Ideology and Utopia*, London, 1936.

3. See E. Bloch, *Geist der Utopie*, 2d ed., Frankfurt 1964, further, his *Das Prinzip Hoffnung*, 2 vols., Frankfurt 1959; H. Gekle (ed.), *Abschied von der Utopie*, Frankfurt 1980.

4. See G. W. Leibniz, *Theodicy*, part 1, para. 10.

5. See A. G. Baumgarten, *Meditationes Philosophiae de Nonnullis ad Poema Pertinentibus*, Halle 1735, pp. 20–22 (LI–LVII). On this see H.-J. Mähl, "Der poetische Staat. Utopie und Utopiereflexion bei den Frühromantikern," in *Utopieforschung*, vol. 3, p. 273–302.

6. See T. Ramm, *Die Grossen Sozialisten als Rechts- und Staatsphilosophen*, Stuttgart 1955.

7. See especially, K. Marx and F. Engels, "Manifesto of the Communist Party" (1848), in K. Marx, *The Revolutions of 1848*, Harmondsworth 1973; "The Class Struggles in France: 1848–1850" (1850), in K. Marx, *Surveys from Exile*, Harmondsworth 1973; and F. Engels, *Die Entwicklung des Sozialismus von der Utopie zur Wissenschaft* (1882), Berlin 1955.

8. See on this topic, Study Unit 20 of the Funkkolleg, *Praktische Philosophie/Ethik*, Weinheim 1984.

9. It seems that just such an unusual extension and substantiation of the anthropological concept of the function of utopia is envisaged, for instance, in the following remarks of Lars Gustafsson (in his *Utopien*, Munich 1970, pp. 92ff.): "Utopian patterns of thought are commonly associated with political radicalism, with the revolutionary tradition. In reality, it is quite unclear as to whether such a classification exhausts the field. It is not merely our conception of what a future based upon social preconditions that are radically different from the present ones could look like that required utopian conceptions. In our actual action within existing Western industrial society too [. . .] there exist elements that are difficult to explain if one did not imagine an unconscious utopianism as part of their background [. . .]. Every attempt to organize the present must contain an element of prediction [. . .]. Technocratic society too has its utopia, it also presupposes a transformation towards an unknown goal [. . .]."

10. I refer here to a central motif of the book by Hans Jonas, directed against Bloch's utopian "principle of hope." See H. Jonas, *Das Prinzip Verantwortung*, Frankfurt 1979, pp. 63ff.

11. In the context of the Bielefeld colloquium on utopia, the theme of a "critique of utopian reason" constitutes my own research topic, but the elaboration of this theme was not possible in the framework of an article. The results of this research are soon to be published in book form.

12. On the history of chiliasm as a potential of time or utopia of the future, see W. Nigg, *Das ewige Reich*, Erlenbach bei Zürich 1944; further on this see S. A. Jørgensen, "Utopisches Potential in der Bibel. Mythos, Eschatologie und Säkularisation" in *Utopieforschung*, vol. 1, pp. 375–401; also, J. Mahl, *Die Idee des goldenen Zeitalters im Werk des Novalis*, Heidelberg 1965; on Joachim of Fiore see now also F. Seibt, "Utopie als Funktion des abendländischen Denkens" in *Utopieforschung*, vol. 1, pp. 254–279.

13. In West Germany, the philosophy of Arnold Gehlen must be seen as the background to all critiques of the "utopianism of left-wing intellectuals" that are oriented towards an institutional theory. See especially, *Urmensch und Spätkultur*, Bonn 1956 and, most recently, *Moral and Hypermoral*, Frankfurt 1973. On the pragmatically oriented, neoconservative critique of utopia, see especially Hermann Lübke, "Herrschaft und Planung" in *Die Frage nach dem Menschen. Festschrift für Max Müller*, Freiburg/Munich 1966, p. 188–211; his, *Fortschritt als Orientierungsproblem*, Freiburg 1975; his *Unsere stille Revolution*, Zürich 1976; his "Flucht in die Zukunft" in *Hochschulreform und Gegenauflärung*, Freiburg 1972, pp. 75ff; also H. Schelsky, *Die Arbeit tun die anderen. Klassenkampf und Priesterherrschaft der Intellektuellen*, Opladen 1975; his *Die Hoffnung Blochs*, Stuttgart 1979. On the distancing of the Protestant neoorthodoxy from chiliastic and utopian speculation see G. Friedrich, *Utopie und Reich Gottes*, Göttingen n.d. In terms of political ideology, such disavowal of the utopian potential of the theological tradition converges with the untiring denunciation of it by E. Topitsch. See his *Gottwerdung und Revolution*, Pullach 1973, as well as "Die entzauberte Utopie" in *Neue deutsche Hefte*, 20, no. 4, 1973, pp. 3–25.

14. See, for example, R. Kosellek, *Kritik und Krise. Eine Studie zur Pathogenese der bürgerlichen Welt*, Freiburg/Munich 1959, as well as H. Kesting, *Geschichtsphilosophie und Weltbürgerkrieg*, Heidelberg 1959.

15. See H. Kesting, *Geschichtsphilosophie und Weltbürgerkrieg*, op. cit.; and, from a completely different nondenunciatory standpoint, H. Jonas, *Das Prinzip Verantwortung*, op. cit.

16. See on this also H. Lübke, "Zur politischen Theorie der Technokratie," in his *Praxis der Philosophie, Praktische Philosophie, Geschichtsphilosophie*, Stuttgart 1978.

17. On the critique of the "unconditional prognoses" of history, see K. R. Popper, *The Poverty of Historicism*, London 1957.

18. See R. K. Merton, *Social Theory and Social Structure*, (revised edition), New York 1957, pp. 421ff. See also K.-O. Apel, "Types of Social Science in the Light of Human Cognitive Interests" in S. C. Brown (ed.), *Philosophical Disputes in the Social Sciences*, Sussex/New Jersey 1979, pp. 3–50.

19. See K.-O. Apel, "Types of Social Science," op. cit. and *Die "Erklären-Verstehen" Kontroverse in transzendental-pragmatischer Sicht*, Frankfurt 1979, especially III, 2.

20. See on this also L. Gustafsson, "Negation als Spiegel. Utopie aus epistemologischer Sicht," in *Utopieforschung*, vol. 1, pp. 280–292.

21. See K. R. Popper, *The Poverty of Historicism*, op. cit. as well as his *The Open Society and its Enemies*, vol. 2, 5th ed., London 1966.

22. Hans Jonas (see n. 10), primarily, takes up the issue at this point. See also K.-O. Apel, "Die Konflikte unserer Zeit und das Erfordernis einer ethischpolitischen Grundorientierung," in K.-O. Apel et al. (eds.), *Praktische Philosophie/Ethik, Reader 1*, Frankfurt 1980, pp. 267–291.

23. See T. W. Adorno et al., *The Positivist Dispute in German Sociology* (trans. G. Adey and D. Frisby), London/New York 1976.

24. See, for example, K. R. Popper, "On the Theory of the Objective Mind" in his *Objective Knowledge*, Oxford 1972, pp. 153–190, and I. Lakatos, "The History of Science and its Rational Reconstructions," *Boston Studies in the Philosophy of Science*, vol. 8, Dordrecht 1971, pp. 91–136.

25. See Habermas's contributions in J. Habermas/N. Luhmann, *Theorie der Gesellschaft oder Sozialtechnologie*, Frankfurt 1971, as well as his *Legitimation Crisis*, (trans. T. McCarthy), Cambridge, MA/London 1976; additionally, K.-O. Apel, *Transformation der Philosophie*, Frankfurt 1973, vol. 2, part 2, along with the contributions of Habermas and Apel in K.-O. Apel (ed.), *Sprachpragmatik und Philosophie*, Frankfurt 1976.

26. See on this point the works by H. Lübke and H. Schelsky cited in n. 13.

27. See K. Kautsky, *Die Vorläufer des Neueren Sozialismus*, 2 vols., Stuttgart 1896, Cologne 1968.

28. Only apparently this seems to be opposed in Adorno's work to the antiutopian "ban on images," even the avoidance of any positive formulation of a societal ideal. It expresses much more—as already in negative theology—the radical nature of the transcendence of the existent and the knowledge concerning the implicit dependency of any concretized conception of an alternative world upon the contextual implication of conception in the sense of the world that is known. On the ban on images in Adorno, see J. Habermas, "Theodor W. Adorno," *Philosophical-Political Profiles*. On the epistemological problematic of the contextual implications of utopian alternative conceptions of the world, see L. Gustafsson, "Negation als Spiegel" in *Utopieforschung*, vol. 1, pp. 280–292.

29. See J. Habermas, "Zur Philosophischen Diskussion um Marx und den Marxismus," in *Theorie und Praxis*, 2nd ed., Frankfurt 1971, pp. 387–464.

30. See on this, J. Habermas, *Knowledge and Human Interests*, (trans. J. Shapiro), Boston/London 1971, I, 3, as well as J. Habermas/N. Luhmann, *Theorie der Gesellschaft oder Sozialtechnologie?*, op. cit., especially pp. 136ff. In addition, R. Spaemann, "Die Utopie der Herrschaftsfreiheit" in his *Zur Kritik der politischen Utopien*, Stuttgart 1977, pp. 124ff., as well as the accompanying correspondence between Habermas and Spaemann, *ibid.*, pp. 127ff.

31. See K.-O. Apel, *Towards a Transformation of Philosophy*, op. cit., pp. 262ff., as well as his "Das Problem der philosophischen Letztbegründung in Lichte einer transzendentalen Sprachpragmatik," in B. Kanitscheider (ed.), *Sprache und Erkenntnis. Festschrift für G. Frey*, Innsbruck 1976, pp. 55–82. In addition, the discussion in W. Oelmueller (ed.), *Materialien zur Normendiskussion, vol. 1: Transzendentalphilosophische Normbegründungen*, Paderborn 1978, pp. 123ff.

32. On the reconstruction of the Greek and, in turn, the modern enlightenment thresholds of culture in the sense of the attempted transition to a postconventional justification of norms, see Study Units 3 and 4 of the Funkkolleg, *Praktische Philosophie/Ethik*, op. cit.

33. See H. Lübbe, "Sind Normen methodisch begründbar?" in W. Oelmüller (ed.), *Transzendentalphilosophische Normenbegründungen*, op. cit., pp. 38ff. In addition see the contributions of H. Lübbe and C. F. Gethmann in W. Oelmüller, *Materialien zur Normendiskussion*, vol. 2, op. cit.

34. H. Lübbe's thesis is to be seen in connection with his metacritique of Horkheimer's "critique of instrumental reason" in *Fortschritt als Orientierungsproblem*, op. cit., pp. 121ff.

35. See on this point also J. Habermas, *Legitimation Crisis*, op. cit.

36. See also H. Lübbe, "Pragmatismus und die Kunst der Diskursbegrenzung" in W. Oelmüller (ed.), *Materialien zur Normendiskussion*, vol. 2, op. cit., pp. 118ff.

37. On the problem of types of rationality and their mediation in the light of a communicative ethics, see K.-O. Apel, "Die Situation des Menschen als ethisches Problem," *Akten des XII Deutschen Kongresses für Philosophie*, Innsbruck 1981.

38. See I. Kant, "Über ein vermeintes Recht aus Menschenliebe zu lügen," *Akademie-Textausgabe*, Berlin 1968, vol. 8, pp. 432ff. See also "Perpetual Peace," in I. Kant, *On History* (ed. L. W. Beck), Indianapolis/New York 1963, pp. 85–135, especially pp. 106ff., where Kant declares himself for "fiat iustitia, pereat mundus" and does not recognize the necessity for a mediation between the strategic responsibility for success in politics and morality.

39. See the author's works cited in n. 25 and n. 31 as well as more recently in W. Kuhlmann, "Reflexive Letztbegründung," *Zeitschrift für Philosophische Forschung*, 35, 1981, pp. 3–26. In the meantime, the discussion concerning the possibility or impossibility of a rational ultimate justification of ethics has taken on such a wide scope that it cannot be sufficiently taken into account in the present context. The author hopes to make good this defect on another occasion.

40. See H. Albert, *Traktat über kritische Vernunft*, Tübingen 1969, p. 13.

41. See I. Kant, *Akademie-Textausgabe*, vol. 5, op. cit., pp. 46f. Ever since G. E. Moore in analytical metaethics, the objection of the "naturalistic fallacy" has been directed at the justification of ethical norms by reference to a "fact of reason." See K.-H. Ilting, "Der naturalistische Fehlschluss bei Kant" in M. Riedel (ed.), *Rehabilitierung der praktischen Vernunft*, Freiburg 1972, vol. 1, pp. 113–132. Even if, for all that, it were possible—contrary to Kant's opinion and in the sense of speculative idealism—to demonstrate the existence of free will independently of the already presupposed binding nature of the moral law (in the sense of "You can, therefore you should"), even then in my opinion—contrary to Kant's and Fichte's presuppositions—only a necessary but not a sufficient condition of the validity of the moral law would be thereby established; for under the mere presupposition of the freedom of the self in relation to a nonself, i.e., without the presupposition of the reciprocity of claims in a communication community of ego-subjects, the meaning and the necessity of something like ethics would not even be intelligible. In my opinion, there exists here the necessity for a communicative-theoretical transformation of transcendental philosophy.

42. The argument that is constantly advanced by decisionism, that human beings must also still decide for or against reason, does not refer to the normative validity of the discursive principle of reason—for this must also already be presupposed for the correct understanding of "decision"—but to the practical following or nonfollowing of the norm of reason. "Decisionism" itself rests precisely upon the confusion of this problem with that of the justification of validity.

43. It is required that, for its part, the principle of self-contradiction, which is to be avoided pragmatically, must still be justified (see, for example, S. C. F. Gethmann/R. Hegselmann, "Das Problem der Begründung zwischen Fundamentalismus und Dezi- sionismus," in *Zeitschrift für allgemeine Wissenschaftstheorie*, vol. 8, 1977, pp. 342–368). Yet this demand apparently rests upon the presupposition, also found in H. Albert's work, of the *deductive*—or, in the broader sense, "inferred"—concept of justification. For, by means of a reflexive return to what is irreducible, it can indeed always be demonstrated that anyone who seriously engages in argument already lays claim to the principle in question. In this evidence there lies not so much a logically circular proof of the principle as rather the demonstration that, in the sense of the transcendent pragmatic reconstruction of the preconditions for the possibility of meaningful communication, there lies in it, at all events, an additional duty of justification with reference to the above mentioned principle that it places in question.

44. This presupposition is not to be confused with that of a metaphysical-theoretical or empirical-theoretical knowledge of the self. Further, whoever rightly disputes the presuppositionless evidence of the Cartesian knowledge of the "res cogitans"—as for instance Nietzsche—must in fact acknowledge the reflexive-performative certainty of precisely this act of argumentation and its claim to validity, if argumentation is to be meaningful.

45. Without this presupposition one cannot seriously enter into the activity of argu- mentation. See on this point. K.-O. Apel, "Warum transzendente Sprachpragmatik?," in H. M. Baumgartner (ed.), *Prinzip Freiheit*, Freiburg/Munich 1979, pp. 13–43.

46. I do indeed take this thesis of Habermas's to be correct, but in contrast to him I see in this *anthropological* truth no substitute for the *transcendental-pragmatic* ultimate justification through strict reflection upon the indisputable presuppositions of those who, for instance, question the anthropological thesis, or who view it as a mere fact as being normatively unbinding for themselves. In short, the ultimate justification of the validity of ethical norms must—in contrast to the reconstruction of its meaning constitution—commence from the *methodical* primacy of discourse unburdened by action, because it must always already presuppose rendering problematic the validity claims of human communication as such. See on this point, K.-O. Apel, "Sprechakt- theorie und transzendente Sprachpragmatik zur Frage ethischer Normen" in K.-O. Apel (ed.), *Sprachpragmatik und Philosophie*, Frankfurt 1976, especially pp. 122ff.

47. On this division of the burden of proof, see also I. Kant, *Akademie-Textausgabe*, vol. 8, pp. 308f.

48. See I. Kant, "Idea for a Universal History from a Cosmopolitan Point of View," in I. Kant, *On History*, op. cit., pp. 27f.

49. See H. Jonas, *Das Prinzip Verantwortung*, op. cit., pp. 227ff.

50. See n. 11 above. In this context belong also the very interesting statements by Lars Gustafsson in his "Negation als Spiegel," op. cit., pp. 290–292.