

PROBLEMS OF DISCOURSE THEORY

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There are three categories of problems in discourse theory. The first group of problems arises if discourse theory is regarded as a truth theory. The second group investigates its practical applicability, and the third group concerns the justification of discourse theory. We talk about the *status* of discourse theory as a truth theory, when we discuss the relationship between the concepts of truth and correctness and the concepts of consensus, unlimited discussion and rationality.¹ The problem of *applicability* is at stake, if the discourse theory is accused of being without any content and merely formal, which becomes apparent by the fact that it does not lead to any definitive result.² The problem of *justification* is the problem of establishing conclusive reasons for discourse rules and principles.³

I want to discuss just the first two problems, namely the status and the applicability problems. There will

¹ See e. g. H. Scheit, *Wahrheit - Diskurs - Demokratie*, Freiburg/Munich, 1987, pp. 123 ff.; A. Wellmer, *Ethik und Dialog*, Frankfurt/M., 1986, pp. 70 ff.

² A. Wellmer (n. 1), p. 72.

³ Compare J. Habermas, "Diskursethik - Notizen zu einem Begründungsprogramm", in: J. Habermas, *Moralbewußtsein und kommunikatives Handeln*, Frankfurt/M., 1983, pp. 67 ff.; W. Kuhlmann, *Reflexive Leitbegründung*, Freiburg/Munich, 1985, pp. 181 ff.

be another limitation to my subject. Both problems are problems pertaining to all forms of discourse, meaning that they appear, for instance, in theoretical, practical, and esthetical discourse. I will only consider practical discourse.

I. *Discourse Theory as a Procedural Theory*

Discourse theory belongs to the class of procedural theories.⁴ According to all procedural theories the correctness of a norm or the truth of a proposition depends upon whether the norm or proposition is or can be the result of a certain procedure —or not. What is actually the result of a procedure, can be the result of that procedure, while this does not apply in reverse. The can-version does, therefore, embrace more. It is going to be the starting point of my considerations. If *a* is the exponent of a procedural theory of the can-version, according to which the procedure *P* is to be applied, then *a* will answer the question, whether or not a norm *N* is correct, with:

D: A norm *N* is correct, if and only if it can be the result of the procedure *P*.

There are various ways of constructing the procedure *P*. The differences may relate first to those concerning the individuals, and second to those concerning the requirements of the procedure. Third, its character depends upon how the procedure is constructed with regard to the individuals and the requirements.

As to the *individuals*, one has to differentiate through number and characteristics. *P* can be carried out by one individual, but in *P* several or all individuals of a more

⁴ See R. Alexy, "Die Idee einer prozeduralen Theorie der juristischen Argumentation", in: *Rechtstheorie*, Beiheft 2 (1981), pp. 178 ff.

or less wide class may also take part. Concerning the characteristics of the individuals, one can work with actually existing or with constructed or ideal individuals. The ideal observer theory proposed by Firth⁵ is an example of a procedure that firstly uses only one individual, and secondly an ideal one. Discourse theory again is characterized by the fact that an unlimited number of individuals, in the state they actually exist, can participate in *P*.

The *requirements* can be of various kinds. So it is possible to establish certain cognitive and motivational characteristics of the individuals, or to fix conditions or circumstances under which argumentation and decision have to take place, or to formulate rules according to which the procedure has to be performed. The most important differences arise from variations in the strength of the requirements.

The procedure's *character* depends on the number of individuals and the kinds of requirements. For determining the character of the procedure it is decisive, whether the possibility of a change in empirical and normative convictions of the participants is provided or not. If this is not the case, one can decide on the basis of the empirical and normative material at *one* point in time. Such a model of *decision theory* is suggested by Rawls in order to choose his principles of justice, which he calls "the only choice consistent with the full description of the original position"⁶ that can be made from the "standpoint of one person selected at random".⁷ Discourse theory as a model of *argumentation theory* again is characterized by the possibility that the empirical and

⁵ R. Firth, "Ethical Absolutism and the Ideal Observer", in: *Philosophy and Phenomenological Research*, 12 (1952), pp. 320 ff.

⁶ J. Rawls, *A Theory of Justice*, Cambridge, Mass., 1971, p. 121.

⁷ J. Rawls (n. 6), p. 139.

the normative convictions, as well as the interests of the individuals, can change because of arguments presented in the course of procedure. In the following, I will only discuss this version of a procedural theory.

II. *Rules of Discourse*

The requirements of discourse theory can, as there is no prescription concerning the individuals, be entirely formulated by rules. I have tried elsewhere to express the system of discourse rules as completely as possible.⁸ The system consists of rules which demand, for example, non-contradiction, clearness of language, empirical truth and sincerity, and of rules which express the idea of universalisability, e. g. by giving everybody the right to participate in the discourse and by granting everybody equal consideration in the discourse, and of rules which concern the consideration of consequences, the weighing of reasons and the analysis of the genesis of normative convictions.

Against this variety the objection has been raised, that it expressed a "mixed concept of rationality",⁹ which did not actually serve the clarity of analysis. To this one can answer that practical rationality is a complex matter. The result of an analysis of a complex matter can only be a complex model. The decisive question is whether the model can cope with the crucial problems arising in the relevant realm. Furthermore, it has been critically remarked, that some rules had a moral content.¹⁰ This could only be a valid ob-

⁸ R. Alexy, *Theorie der juristischen Argumentation*, Frankfurt/M., 1978, pp. 234 ff.

⁹ O. Weinberger, "Logische Analyse als Basis der juristischen Argumentation", in: W. Krawietz/R. Alexy (eds.), *Metatheorie juristischer Argumentation*, Berlin, 1983, p. 200.

¹⁰ See O. Weinberger (n. 9), p. 195.

jection, however, if at least one of three preconditions were true. The first would be that the concept of practical rationality explicated by the rules must not have any moral content. In my opinion it is at least allowed, and probably even necessary, to incorporate moral contents in a fully-fledged concept of practical rationality. The second precondition would be fulfilled, if those rules which have a moral content, such as those which express non-trivial demands for universalisability, were not justifiable. Here I cannot discuss the thesis that they are capable of a transcendental-pragmatic justification by way of a presupposition-analysis.¹¹ At least it can be claimed that it is uncertain whether they cannot be justified. A third precondition for the success of the objection mentioned above would be that the moral content of some of the discourse rules would deprive the whole system of its practical applicability. This leads one back to the general question of practical applicability.

From the point of view of applicability, the main flaw of discourse theory consists in the fact that its rule system provides no procedure which allows one to come to exactly one result in a finite number of operations. There are three reasons for this. First, the rules of discourse contain no prescriptions concerning the starting points of the procedure. Starting points are the normative convictions and interpretations of interest of the participants, just as they appear. Second, the rules of discourse do not prescribe all steps or argumentation. Third, a number of the rules are only approximatively

¹¹ J. Habermas (n. 3), pp. 93 ff.; R. Alexy (n. 8), pp. 230 ff.

fulfilable.¹² Thus discourse theory does not guarantee a definite decision in each case.

One might think that this already reveals the unapplicability of discourse theory. To get rid of this objection one has to distinguish between real and ideal discourses. Let us have a look at the latter first.

III. *The Ideal Discourse*

Discourse can be ideal in either some or all respects. Only the discourse which is ideal in all aspects shall be of interest here. It is defined by searching for an answer to a practical question under the conditions of unlimited time, unlimited participation, and complete freedom of constraints by way of achieving complete linguistic-conceptual clearness, complete empirical information, complete ability and willingness to change roles and complete freedom from prejudice. The concept of a discourse ideal in all respects provides many problems. The four most important are: the problems of construction, of consensus, of criterion, and of correctness.

1. The Problem of Construction

The problem of construction results from the fact that discourse theory works with real, actually existing persons as participants. A construed prolonging of participation into unlimited time causes the real, actually existing participants to become partially ideal or constructed, that is immortal, participants. This is not the only idealization. One could imagine that a person, who

¹² The concept of rule is used in a wide sense here, embracing both definite obligations and obligations concerning optimalization; on this distinction compare R. Alexy, "Rechtsregeln und Rechtsprinzipien", in: *Archiv für Rechts- und Sozialphilosophie*, Beiheft 25 (1985), pp 13 ff.

is immortal, will take part in discourse eternally, and still learn little or nothing. That is why the concept of a discourse ideal in all respects implies that its participants fulfil all rules of discourse completely. That means that they achieve, regardless of how much time is concerned, complete clearness, information, ability and willingness to change role and freedom from prejudices. That this is not actually possible in fact, does not raise any problems as long as only the concept of ideal discourse is being discussed. To be taken seriously in this context is the question, whether or not the described state is conceptually possible at all. So the question arises, whether linguistic-conceptual clearness is achievable in a discourse with participants from very different cultures with very different languages. Questions of this kind cannot be discussed here. At least it is clear that participants in the ideal discourse undergo a nearly total change from real and actually existing into ideal and constructed participants. This seems to contradict the basic idea of discourse theory mentioned above, namely that discourse is a procedure performed by non-fictitious, that is, real individuals. However, considering that the ideal discourse is not perfect from the beginning, but rather becomes perfect by a construed potentially eternal continuation and because of learning processes taking place with —at the beginning— real individuals, this problem can be solved.

2. The Problem of Consensus

With the problem of consensus, the question arises, whether an ideal discourse leads to a consensus about every practical question. Such a consensus does not follow logically from the statement, that the conditions of ideal discourse are fulfilled. Consensus about a certain

normative question is a substantial matter. The conditions listed above have a formal character in relation to this. Therefore, consensus about every question could be guaranteed only if it could be assumed that the empirical premise, that the fulfilment of the conditions of ideal discourse would make all differences of opinion on practical issues vanish, holds true. This premise presupposes that there are no discourse-resistant anthropological differences, which can exclude a consensus in practical, that is, value-questions, even under the ideal conditions listed above. I think this question cannot be decided. This is so, because there exists no method to foretell the behaviour of real persons under the mentioned non-real conditions. This means that a guarantee of consensus can neither be excluded nor assumed. This has the consequence, that it has to be considered as possible, that even after a discourse lasting eternally, participants will adhere to norms which are incompatible with each other. The result of the procedure would then be both N and $\neg N$. This means that, according to the definition D given at the beginning, both N and $\neg N$ would have to be labeled as "correct". The question resulting from this will have to be dealt with in the discussion of the problem of correctness.

The question whether a consensus reached after potentially infinite duration and under ideal conditions would be necessarily a final or definite consensus, leads to a second aspect of the problem of consensus. A stable consensus would be reached if no additional argument which could lead to a change of the normative conviction in question in at least one participant were possible. I think that in this context it does not matter whether the class of normatively relevant arguments is finite or infinite. As long as the participants are not assumed to have been equipped with the characteristic not to

overlook any possible normatively relevant argument, even a potentially infinite discourse, in which the participants achieve the ideal conditions mentioned, does not guarantee that a new argument could not destroy the consensus reached for once. Things would be different only if the infiniteness of discourse were interpreted as actual¹³ infiniteness in such a way that all possible arguments were brought up and considered, which shall be not done here. A consensus could then by definition no longer be destroyed by a new argument.

Summing up what has been said about the problem of consensus, two things should be pointed out: (1) Even in the case of a potentially infinite ideal discourse it cannot be excluded that there will be no consensus at all. (2) Even in the case of a potentially infinite ideal discourse it is never certain whether a consensus reached for once is final or definitive.

3. The Problem of Criterion

The things discussed above have serious consequences in regard to the third problem, the problem of criterion. This problem concerns the question to what extent the ideal discourse will work as a criterion of correctness when substituted for P in the definition D given above. As the ideal discourse cannot be carried out by definition, it can only be used as a criterion, by asking whether a norm N *could* be the result of an ideal discourse. Three problems are of special importance here.

The first problem is caused by the fact that in order to use the ideal discourse as a criterion of correctness, a procedure, which is essentially a collective endeavour involving several persons, must be carried out in the

¹³ On the concepts of potential and actual infiniteness compare P. Lorenzen, "Das Aktual-Unendliche in der Mathematik", in: P. Lorenzen, *Methodisches Denken*, Frankfurt/M., 1974, pp. 94. ff.

mind of one person, and in this sense, *monologically*. It is of the essence of the practical discourse that several persons are involved, for the following reasons. In a practical discourse correct answers to practical questions are being searched for, which concern the interests of several persons. Thus, the correct solution of a conflict of interests is at stake. For this purpose, the respective actually existing normative convictions of the participants concerning the right solution are exposed to rational scrutiny. In this process, the respective interpretations of the participants' interests and the changes thereto, caused by arguments, play a decisive part. How an interpretation of interests eventually has to be changed because of arguments, is finally everybody's own concern. From this it follows that then, if the correctness of the results of discourse depends on the correctness of the interpretation of interests, and if the correctness of interpretation of interests is a matter of argumentative investigation, the discourse is *essentially non-monological*. The consequences resulting from this for someone who asks himself, whether something can be the outcome of a discourse, are less fatal than they appear to be at first glance. Though discourses are essentially non-monological, a discourse carried out in the mind of one person can still approximate a discourse conducted by several persons. One can never be sure of the arguments, the interpretation of interests, and the changes in the interpretations of other persons, but it is possible, to a considerable degree, to make well grounded conjectures about them. Manifold arguments have been uttered, by various persons, about almost any practical question. Everyday life, literature and science provide numerous informations about possible ways of the interpretation and changes of interests. From the monological conduct of discourse arises a considerable

amount of uncertainty. Nevertheless, for this reason, the virtual discourse carried out in the mind of one person only would be an inappropriate criterion only if from the uncertainty of a criterion would follow its inappropriateness.

The second sub-problem of the criterion-problem results from the *ideal* character of the ideal discourse's requirements. Neither a real discourse nor a virtual discourse, carried out in the mind of one person, can ever fulfil these demands completely. However, it is possible to fulfil the ideal requirements approximately. A result, which only approximately meet the requirements of the procedure, is necessarily an uncertain criterion. But as mentioned above, uncertainty does not imply uselessness.

The third sub-problem of the criterion-problem is caused by the *internal structure* of the ideal discourse. When I discussed the problem of consensus, I stated that first of all, even in a potentially infinite ideal discourse, nobody can be certain whether a once-reached consensus is finite or definite, and second, it cannot be excluded that even in such a discourse there is no consensus at all, meaning that two contradicting norms can be the result of the ideal procedure. The problem of definiteness causes lesser difficulties. A consensus which is the result of a potentially infinite ideal discourse does not grant final certainty but still such a high rate of security that it can be accepted as a criterion. The problem of contradiction is more sincere. A criterion that does not exclude the possibility that two contradicting norms are correct seems to fail because of the most basic semantic demands of the term "correct". This problem shall be pursued further in the following discussion of the problem of correctness.

4. The Problem of Correctness

Considering the problem of correctness three questions have to be discussed: (a) the problem of the concept of correctness, (b) the problem of objectivity and (c) the aforementioned problem of contradiction. I want to emphasize that my considerations only apply to practical discourses and therefore only to practical correctness or truth. How far what is said here is transferable to the theoretical discourse and the problems of theoretical truth must remain open.

a) Concept and Criterion of Correctness

The standard objection against the discourse theory, concerning the concept of correctness, is that it confuses the difference between concept and criterion. To counter this objection one has to distinguish between a criteria-free and a criteria-laden definition of the concept of practical correctness. A criteria-free definition is achieved if one develops, using ideas of Tarski,¹⁴ a semantic conception of practical correctness which is oriented towards the following equivalence: The sentence "X is obligatory" is correct, if and only if X is obligatory. Such a conception of practical correctness enlightens an important aspect of the concept of practical correctness. However, there are further aspects of this concept which can only be grasped by a criteria-laden procedural definition, as suggested here. Both conceptions are compatible. They are not in a relationship of competition but in a relationship of complementarity.¹⁵ For each there are purposes which justify them.

¹⁴ See A. Tarski, "The Semantic Conception of Truth and the Foundation of Semantics", in: *Philosophy and Phenomenological Research*, 4 (1943/44), p. 343.

¹⁵ On the thesis that various truth and correctness theories do not necessarily stand in a competitive relation, but can also stand in a

b) The Problem of Objectivity

More important is the second sub-problem of the correctness-problem, the problem of objectivity. It concerns the objection that the links between the concepts of correctness and of truth with those of discourse and of consensus suggested by discourse theory are not appropriate. Correctness and truth are something which is objective. Discourse and consensus again belong to the realm of subjective conviction and mere believing and accepting.¹⁶ The discourse theory does not distinguish sufficiently between regarding as true and being true.¹⁷ The fact that all agree to a sentence does not mean that it is correct or true, because all can be mistaken. This also applies to the result of ideal discourses.¹⁸

This objection partly expresses misunderstandings, partly leads to very basic questions. It would be a misunderstanding to think, that according to discourse theory something is true already when all think it is true. It is not the consensus that is decisive. But rather the performance of the discourse procedure. This goes so far as to acknowledge that even in a dissent the contradicting opinions can be labeled as "correct" in a sense to be specified later, provided that they have survived the discourse procedure. It is therefore incorrect to blame discourse theory for taking the consensus as a *reason* for correctness or truth.¹⁹

Not the consensus but the performance of the proce-

complementary relation, compare O. Höffe, "Kritische Überlegungen zur Konsensustheorie der Wahrheit (Habermas)", in: *Philosophisches Jahrbuch*, 83 (1976), pp. 315 ff.

¹⁶ O. Weinberger (n. 9), pp. 188 ff.

¹⁷ K.-H. Ilting, "Geltung als Konsens", in: *10 neue hefte für philosophie*, (1976), p. 36.

¹⁸ O. Weinberger (n. 9), p. 192.

¹⁹ So A. Wellmer (n. 1), p. 72.

cedure, according to the discourse rules, is the real criterion of correctness in discourse theory. The decisive question is, whether performing a procedure according to the basically formal discourse rules is related to the substantial correctness of normative propositions at all. This question formulates the main problem concerning the relation between procedure and correctness. An answer can be successful only if a premise essential for discourse theory is revealed. Discourse theory presupposes that the participants of discourse, that is, human beings, such as they actually exist, are generally able to distinguish between good and bad reasons for substantial propositions. It assumes that there is, in general, a sufficient potential or power to form considered judgements on the part of the participants.²⁰ This does not mean that a sufficient power of judgement is a requirement of the procedure.²¹ The relation between the discourse procedure and the sufficient power of judgement on the part of the participants is analogous rather to that between the constitution of a democratic state and the ability of its citizens to take part in political, economical and social activities. The latter is not demanded by norms of the constitution, but presupposed by the constitution. Further, it should be added here that sufficient power of judgement is presupposed only *in general*. It is one of the purposes of the procedure of the discourse to develop this faculty.

If the presupposition of a generally existent sufficient power of judgement, that is, an ability to distinguish between good and bad reasons for substantial propositions, is introduced in this way as a link between pro-

²⁰ The absence of such a "missing link" between the discourse rules and the correctness of results has often been criticized. Compare e. g. O. Höffe (n. 15), p. 330; K.-H. Ilting (n. 17), p. 34.

²¹ On this version see A. Wellmer (n. 1), p. 72.

cedure and correctness, then one comes to ask why it is still the procedure that is decisive and not simply good reasons or sufficient justifications.²² The reason for this is that there are, at least in practical questions which are essentially concerned with the interpretation and reconciliation of interests, no good reasons as such. What actually is a good reason can only be revealed in the process of discursive investigation. Applying the concepts of subjectivity and objectivity, one might say that the result of the discourse procedure is neither just subjective nor just objective. It is subjective insofar as it is based on characteristics of the participants. It is objective insofar as it has proved itself resistant against a discursive investigation, resting on the general power of judgement of the participants. In this way, discourse theory avoids both the flaws of subjectivistic or relativistic and objectivistic moral theories.

c) The Problem of Contradiction

There remains the third sub-problem of the correctness problem, the problem of contradiction, which results from the fact that it cannot be excluded, that even an ideal practical discourse can have two contradictory norms as its results. According to the definition of "correct" given here, this means that the two contradictory norms can be correct simultaneously. One has to remark that this does not imply that one and the same person can maintain contradictory norms. For the system of norms of every single person the postulate of noncontradiction remains valid. Only incompatible norm systems of different persons are admitted. The question remains whether incompatible parts of the norm systems of dif-

²² Compare A. Wellmer (n. 1), p. 70, 72; O. Weinberger (n. 9), pp. 190 ff.

ferent persons, if and because they have survived the procedure, can be equally labeled as "correct".

This would not be admissible, if there were just one right answer to each practical question,²³ independently of whether there is a procedure to find or to prove it. Those who adhere to this thesis separate the concept of correctness from the concepts of justifiability and probability. From this an *absolute* concept of correctness arises, which has a *non-procedural* character. It would indeed exclude the possibility to label both N and $\neg N$ as "correct". The problem is, that the assumption that there exists one right answer to each practical question independently of a procedure is an ontological thesis, which is not only difficult to justify, but also not very plausible. Answers to practical questions rest not only, but essentially on the interpretation and weighing of interests. It cannot be assumed on this basis that there is just one right answer to each practical question. The thesis of the existence of one right answer to each question is, at least as far as practical questions are concerned, a non-justifiable ontological fiction. Such a fiction is not sufficient to determine how the term "correct" is to be used.

The fact that the thesis of the existence of one right or correct answer to each practical question must be given up, does not entail that the concept of correctness has no absolute character at all. It has an absolute character as a regulative idea. As a regulative idea, the concept of correctness does not presuppose that there always already exists a right or correct answer to each practical question, which only has to be found.²⁴ The

²³ See R. Dworkin, *A Matter of Principle*, Cambridge, Mass./London, 1985, pp. 119 ff.

²⁴ See I. Kant, *Kritik der reinen Vernunft*, A 509, B 537: "ein Prinzipium der Vernunft, welches, als Regel, postuliert, was von uns im Regressus

only correct answer rather acquires the character of a goal to be strived for.²⁵ The participants in a practical discourse have to claim that their answers are the only correct ones independently of whether there is one single correct answer, if their statements and justifications are supposed to make sense. This only presupposes that it is possible that there are practical questions, for which one single correct answer can be found in a discourse, and that it is not certain what questions these are, so that it is worthwhile to try to find the one single correct answer to each question. This expresses an *absolute procedural* conception of correctness. It meets up with the meaning of the term "correct" in ordinary language without any problems.

The problem of contradiction thereby leads to a splitting of the concept of correctness, into an absolute and a relative one. If both $N \neg N$ are results of the procedure, then they are both correct relative to this procedure.²⁶ The absolute procedural concept of correctness again demands that the search for only one answer is continued. The concept of relative procedural correctness plays its most important role as far as real discourses are concerned. It will be made clear within the course of their discussion.

geschehen soll, und nicht antizipiert, was im Objekte vor allem Regressus an sich gegeben ist. Daher nenne ich es ein regulatives Prinzip der Vernunft".

²⁵ See I. Kant (n. 24), A 644, B 672: "Dagegen aber haben sie einen vortrefflichen und unentbehrlich notwendigen regulativen Gebrauch, nämlich den Verstand zu einem gewissen Ziele zu richten, in Aussicht auf welches die Richtungslinien aller seiner Regeln in einen Punkt zusammenlaufen".

²⁶ The conception of relative correctness proposed here is not the only one possible. A conception oriented towards the idea of different cognitive processing mechanism has recently been proposed by N. Unwin, "Beyond Truth: Towards a New Conception of Knowledge and Communication", in *Mind*, 96, (1987), pp. 299 ff.

IV. *The Real Discourse*

1. The Discursive Modalities

To discuss the problem of real discourse it is useful to use a simple model. Assume two persons, a_1 and a_2 , try to answer a practical question by means of the procedure defined by the discourse rules. At the time t_1 , a_1 maintain N_1 , and a_2 maintains N_2 , N_1 and N_2 being incompatible. At the time t_2 which marks the end of the procedure, for example the following assignments of solutions to the participants are possible: (1) Both agree on N_i , which can be identical with N_1 or N_2 , but need not be; (2) both reject N_i ; (3) a_1 supports N_i and a_2 supports N_j , $i \neq j$. It seems to make sense to mark these three cases terminologically. In the first case N_i is, relative to the discourse rules, the degree of their fulfilment, the participants, and the timepoint t_2 , *discursively necessary*. In the second case N_i is *discursively impossible* respectively. In the third case N_i and N_j are relative to the discourse rules, the degree of their fulfilment, the participants and the timepoint t_2 , neither discursively impossible nor discursively necessary, but only *discursively possible*. It is important to note here, that the picture in time t_3 and with participation of other individuals can look different.

According to the definition D of correctness given here, both what is discursively necessary at the end of the procedure as well as what is at this time only discursively possible must be labeled as "correct". The introduction of the concept of discursive possibility however makes the problem of contradiction less severe. The fact that both N and $\neg N$ can be correct does merely mean that both N and $\neg N$ are possible in a specific way, namely discursively possible. That both parts of a contradictory conjunction are possible is logically un-

objectionable. What at first glance seems to be a very counterintuitive result, namely that two contradictory norms can be equally correct, thereby loses some of its problematic character.

2. The Relative Concept of Correctness

The relativity of the concept of correctness raises the most severe of the problems presently discussed. The relativity of correctness has four aspects: (1) the discourse rules, (2) the degree of their fulfilment, (3) the participants and (4) the points of time.

I shall not discuss the first problem here, the relativity in respect of the *discourse rules*. This problem does not concern the applicability and status problems, but rather the justification problem, not to be investigated here. After all, it should be apparent that, and how, this problem as well, relates to the problem of correctness.

Second, the fulfilment of some rules is an all-or-nothing affair, while others can be fulfilled only approximately because of their ideal character. In the latter case fulfilment is a matter of degree. This causes the second problem of relativity, the problem of relativity in respect to the *degree of fulfilment*. What is essential here, has been said already when dealing with the criterion problem in discussing the ideal discourse. Merely approximate satisfiability leads necessarily to uncertainty of the discourse as a criterion, though, as has been stated, uncertainty does not imply uselessness.

Third, the relativity in respect to the *participants* does cause uncertainty as well. Moreover, it leads, at least as far as real discourses limited in time are concerned, to a broadening of the scope of what is only discursively possible. On the other hand, because of the structure of practical problems, uncertainty can-

not be avoided. It demands, as shown above, a non-monological procedure. Further, every discourse must have a starting point. It cannot start from nothing. Its starting points are the factual existing normative convictions of the participants, whatever they are. The discourse is nothing but a procedure of rational investigation of these convictions. In this process any normatively relevant conviction is a candidate for a change caused by rational argument. This restriction to the rational structuring of the process of argumentation amounts to an important advantage of discourse theory. A more demanding theoretical alternative might try to determine the outcome of the procedure. To this end it would have to establish certain substantial normative tenets as starting premises, instead of merely structuring the process of argumentation or decision. This alternative has to overcome at least two severe obstacles. First, objections to the substantial starting premises, chosen by the theorist, are usually harder to answer than objections against the basically formal discourse rules. Second, it has to come to grips with the general objection that the theorist treads ground he should rather leave to the participants of the discourse, because his substantial normative convictions cannot be assumed to be generally more correct than those of the participants themselves. It should be further noticed that the role of the participant is open to the theorists too at any time.

Fourth, relativity in regard to *points of time* is inescapable because of the limits to every real discourse. As far as merely discursively possible results, that is, dissent, is concerned, the regulative idea of correctness demands the non-final character of the results. With discursively necessary results, that is, consensus, the

necessarily non-final character is caused by the necessary imperfection of any real discourse.

One may be tempted to think, that considering the fulfilment, participant and point of time relativity one should give up the concept of correctness. Instead, one could suggest that concepts like that of warranted assertability, plausibility, justifiability and reasonableness should be used. This indeed would have the advantage, that one would not have to go on with a bifurcated concept of correctness: that of absolute procedural correctness, which has the character of a merely regulative idea, and that of relative procedural correctness, which includes a high degree of uncertainty. As often, the terminological problem reflects serious substantial questions. At least it can be said, in favour of the terminology preferred here, that the colloquial way of speech admits saying that the adherents of two wellgrounded but incompatible normative opinions are both correct *in their way* (relative correctness), in order to continue asking who *really* is right (absolute correctness), at the same time admitting that probably nobody is going to find out. The substantial reason in favour of the terminology chosen here is that the discourse leads, if not to certainty, at least out of the realm of mere opinion and subjective belief. Taking into account that more cannot be achieved in practical questions, the use of the concept of relative correctness seems to be appropriate.

Although many objections against discourse theory could be answered, the result remains strangely unsatisfying. On the one hand, the concept of correctness weakens to a regulative idea, on the other hand it is highly relativised and overburdened with uncertainties. This must not be the last word, however. It may be true, that the practical value of discourse theory will show its full extent only if it is taken as the basic theory

of the institutions of a democratic constitution which incorporate the idea of discussion.²⁷ But to tackle these questions²⁸ would require a new paper.

²⁷ Compare the German Federal Constitutional Court, in: BVerfGE 5, 85 (197 ff).

²⁸ See M. Kriele, *Recht und praktische Vernunft*, Göttingen, 1979, pp. 30 ff.; R. Alexy (n. 4), pp. 185 ff.

RESUMEN

En la teoría del discurso hay tres categorías de problemas. El primer grupo de problemas se presenta cuando la teoría del discurso se considera como una teoría de la verdad. El segundo grupo investiga su aplicabilidad práctica y el tercero se ocupa de la justificación de la teoría del discurso. Nos referimos al *estatuto* de la teoría del discurso como teoría de la verdad cuando discutimos las relaciones entre los conceptos de verdad y de corrección y los conceptos de consenso, de discusión ilimitada y de racionalidad. Nos enfrentamos al problema de la *aplicabilidad* si a la teoría del discurso se le acusa de carecer de contenido y de ser meramente formal, lo cual se manifiesta en el hecho de que no conduce a ningún resultado definitivo. El problema de la *justificación* es el problema de establecer razones concluyentes para las reglas y los principios del discurso.

Aquí se discuten solamente los dos primeros problemas: el problema del estatuto y el problema de la aplicabilidad. Ambos problemas pertenecen a todas las formas de discurso. Se presentan, por ejemplo, en el discurso teórico, en el discurso práctico y en el estético, etc. En el artículo se considera únicamente el discurso práctico.