Saturday Morning Soccer-Field Conversations:  
Imagining the British Columbia  
Commission on Resource and Environment (CORE)  
Under Habermas’ Discourse Theory

1.0 Introduction

The politics of the natural landscape in British Columbia has been marked in recent decades by a conflict between those who have sought to develop the potential of the province’s natural resource base and those who would endeavour to protect its environmental quality and wilderness characteristics. During the 1980s, this conflict heightened into what has become referred to as “the war in the woods.” The evolution of forest policy throughout the 20th century that led to this “war” and its denouement into the present day “cold war” is briefly sketched in the following section.

As a response to this escalating conflict, the B.C. government established the independent Commission on Resources and Environment (CORE) in 1992 to develop a land use and environmental management strategy for the province based on dispute resolution and interest based negotiation processes. An “urban myth” that has spread in recent years among B.C. policy watchers holds that the design principles for CORE catalysed during the Saturday morning conversations of the province’s then premier Mike Harcourt and CORE’s first Commissioner Stephen Owen (at that time the province’s Ombudsman) along the sidelines at their sons’ soccer games. While both men admit that these conversations had a role leading up to the establishment of CORE, there is a much richer theoretical and applied background that informed the operating principles for the Commission. This literature, and the design principles it gave rise to as manifest in CORE, is briefly surveyed in section three. Some observations on the conduct and consequences of the CORE process are also presented there.

Building on this foundation, this paper poses a hypothetical question set in the context of the mythologised Saturday morning soccer-field context. What if, in addition to Harcourt the politician and Owen the Ombudsman, the political philosopher Jürgen Habermas had been present at those conversations? Key elements of Habermas’ discourse theory, as they would apply in this context, are discussed in section four. In the concluding section, the relationship between these theoretical principles and the actual design and conduct of CORE is highlighted with some observations on whether discourse ethics would have shape the design and implementation of the Commission’s mandate.

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2.0 Shifting Discourses in the Forests of British Columbia

It can be said that the story of British Columbia’s economic development in the 20th century is written in wood. While the early exploration and settlement of the province was motivated by fur-trading, gold and coal mining, the past 100 years of economic development and politics – and especially the post World War II era – have been dominated by logging. First carried out as a by-product of land cleared to make way for human settlement, then concentrated in near-by, easily accessed coastal areas which provided convenient water transportation, logging activity has spread throughout the province. For a new country which had “too much geography,” the civilising force of land clearing was a welcomed encroachment on a seemingly impenetrable wilderness. Also, the free gift of nature that the great expanse of forests offered provided an opportunity for the new province to earn – by the middle of the century – one of the highest levels of per capita income in the world.

Public concern over the devastating impacts of unconstrained forest practices and the possibility that the long-term value of the resource might be squandered did emerge in the pre-war period, leading to the creation of the first of two Royal Commission on forest resources headed by the Hon. Judge Gordon Sloan. Acting on the 1945 recommendations of the first Sloan Royal Commission\(^4\), the sustained yield forest management approach was adopted in British Columbia. Sustained yield views forests as a quasi-agricultural asset that is most efficiently harvested at its peak productivity. Through the application of scientific management principles, sustained yield was designed to provide a consistent supply of forest products in perpetuity. With public concerns assuaged, the debate over forest practices through to the mid 1960s was confined to the industry-government axis – centring on the technical implementation of sustained yield. The middle point of the 1960s marks the emergence of broader concerns in forest values, with advocacy of an integrated approach to forest management – highlighting the recreational and environmental benefits to be enjoyed from the province’s forests – emerging first in the public sphere then penetrating the provincial bureaucracy outside of the Ministry of Forests. Surfing the second wave of the modern environmental movement, a scientific-advocacy coalition rooted in conservation biology emerged in the mid 1980s. This biodiversity movement used the powerful imagery of the old growth rainforest of the coastal region to engage the growing urban environmental sympathies and press for the adoption of concepts such as adaptive ecosystem management by government and industry decision makers.

Jeremy Wilson maps out these “shifting discourses of B.C. forest policy” in the 20th century and offers the following broad characterisations:

1. Early 20th century: minimally constrained development (translating natural resources into social wealth);
2. Late 1930s onwards: sustained yield or liquidation-conversion (concern for resource perpetuity);
3. Mid 1960s onwards: multiple use, integrated resource management (recognition of recreational and environmental values);

\(^3\) Canada (House of Commons). 1936. Debates, June 18, 1936, 3868, Prime Minister William Lyon Mackenzie King.


To this sequence of shifting discourses, a fifth category is added here: the interests of the global community in the forest practices of British Columbia. David Cohen6 began his discussion of this international scrutiny which has coloured B.C. land use decisions in the 1990s by quoting the province’s Chief Forester: “forest practices are no longer a provincial issue. They are an international issue.” This internationalisation – advanced by governments, corporations, individuals and global civil society – has imposed the values of those “global citizens” within the British Columbia public sphere. No longer were the requirements of citizenship or community membership prerequisites for having a legitimate position in B.C. public decision making. “Environmental enfranchisement” (Cohen’s term) takes place through the market forces accompanying economic globalisation and through advocacy coalitions emerging in global civil society. In both cases, the opinions formed in international circles have become an important component of forest policy in British Columbia.

The central arena for this internationalisation of British Columbian forests was Clayoquot Sound, on the west coast of Vancouver Island and adjacent to Pacific Rim National Park, with the protection of old growth forests being the primary target.7 As the scene of an almost two year search for a consensus agreement between 1990 and 1992, Clayoquot was removed from the CORE – Vancouver Island mandate8 and subjected to a cabinet decision which satisfied few and angered many. Especially upset were environmental groups which pressed for an ecocentric approach to the area. More than 800 people were arrested in 1993 for defying a court injunction against a logging road blockade at Clayoquot Arm Bridge. Local environmental groups such as the Friends of Clayoquot Sound, the Western Canada Wilderness Committee, Greenpeace and the Sierra Club of B.C. were able to use the Clayoquot Sound issue as a springboard into a greater scale of operations with international exposure, cultivating links with foreign media, environmental groups and prominent U.S. politicians. And acting in concert with consumer groups, global environmental NGOs applied pressure and led boycotts designed to influence the purchasing practices of some of the province’s biggest forest products customers – primarily newsprint buyers and lumber retailers. While a majority of British Columbia residents opposed the influence of foreign forces on B.C. forest policy,9 the international attention had clearly become a key influence in domestic decision making in the early 1990s.

5 Wilson, op. cit., pp. 13-16.
7 Other B.C. areas and issues of particular international concern, for varying reasons, have been the Tatshenshini-Alsek area in northwest B.C., the Carmanah and Walbran Valleys south of Clayoquot Sound, the Khutzeymateen and Kitlope areas on the province’s central coast, and native land claims and forest practices generally.
8 See note 11 infra and accompanying text
9 Wilson, op. cit., p. 302 and fn. 4; seventy five percent of British Columbians claimed to disagree with the tactics. As with all polls, it is not surprising that a contemporaneous poll by the same firm for the same client (the Ministry of Forests) showed equally significant majorities in favour of strengthening the requirements and enforcement of the province’s forest practices regulations (see ibid., p. 303-304, tables 12.1A and 12.1B).
Cohen calls this internationalisation a central feature of the sustainable development paradigm that ultimately views the globe as a single ecosystem: “there is a growing realization that, while political boundaries will continue to exist, we are connected to human beings and to the natural environment in other parts of the world; humanity has no boundaries, and the environment has no boundaries.” International environmental treaty making, which attempts to address actual deleterious impacts of transborder pollution, is the most obvious manifestation of this realisation. But the engagement of corporate, private and civil society forces in addressing the values-based psychic impacts of activities carried out in one part of the biosphere extents the concept of transboundary environmental impacts much further.

3.0 Design, Conduct and Results of CORE

With the emergence of Wilson’s fourth “discourse” in British Columbia’s forest history came the heightened conflict of “the war in the woods.” As the new environmentalism took hold in urban settings and began to place political pressure on provincial decision makers, and as urban escapees increasingly moved into previously heterogeneous rural areas, conflicts between those bearing environmental values and those dependent on resource extraction became more acute. In response, the B.C. Commission on Resources and Environment (CORE) was established in 1992 with a mandate to develop a B.C.–wide strategy for land use and related resource and environmental management; facilitate the development, implementation and monitoring of regional planning processes; design community-based (local) participatory processes; and initiate a dispute resolution system for land use and related resource and environmental issues. Specifically included in CORE’s initial mandate was the development of strategic land use plans for four areas that had recently seen specific land use conflicts: Vancouver Island (excluding, as noted, Clayoquot Sound), Cariboo-Chilcotin, East Kootenay and West Kootenay-Boundary.

These regional round table processes were an attempt to bring together all relevant stakeholders in the area to reach consensus on regional land use plans. In doing so, CORE represented a significant innovation in land use planning in British Columbia. The Commission defined its operational principle of shared decision-making as:

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\text{a framework approach to participation in public decision-making in which, on a certain set of issues for a defined period of time, those with authority to make a decision and those affected by that decision are empowered}
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\[10\] Cohen, op. cit., p.2. This realisation is not limited to environmental issues. The recent unprecedented action by NATO to intervene in the Kosovo conflict represents a significant shift on the part of the international community, in what would have hitherto been considered an “internal dispute.” Having recently witnessed the horrors of the Bosnian civil war, the world community found itself unwilling to stand by and watch Kosovo unfold similarly under the rhetoric of national sovereignty.

\[11\] See note 5, supra and accompanying text.

\[12\] CORE’s mandate was set out in the Commissioner on Resources and Environment Act (SBC Chapter 34).

\[13\] “Consensus” in this context has a different meaning than in the discourse theoretical work of Habermas, described below, which would describe CORE’s “consensus” as “compromise.”
One of the four regional land use planning processes undertaken by CORE, as an example, was in the East Kootenay region. With a long-standing level of conflict over land and resource use in the region, the CORE process was established there to provide a multi-stakeholder public participation process that would point toward a regional strategy for the sustainable use of public lands and resources. Representation at the regional table came from 21 sectors, with the provincial government participating corporately as the representative of all provincial agencies; the provincial government also provided funding and technical support to stakeholder groups through CORE. The planning process was facilitated by a mediator, and was designed as a shared decision-making process with agreement based on consensus. Consensus agreement was reached on a substantial number of recommendations, which provided the basis for the CORE land use plan presented to the government. While none of the CORE regional tables were able to reach total consensus on the allocation of land to competing uses, it can be argued that the shared decision-making processes themselves contributed to decisions which were better informed, more balanced and stable.

Prior to the Saturday morning soccer field conversations of Stephen Owen and Mike Harcourt which preceded the establishment of CORE, proposals and recommendations for the creation of a CORE-like agency were advanced by various actors including the B.C. Ombudsman, the B.C. Round Table on the Environment and the Economy, the Forest Resources Commission, and the Dunsmuir Meetings. Whether the motives underlying the new consultative age of the early 1990s were rooted in the therapeutics of consensual engagement (i.e., diffusing the “war in the woods” by giving combatants a seat at a table), the politics of “selling” traditionally brokered political deals, or the

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14 CORE (British Columbia, Commission on Resources and Environment). 1992. *Report on a Land Use Strategy for British Columbia*. Victoria, B.C.: Commission on Resources and Environment. N.B.: all CORE document citations are from the complete collection of Commission documents that have been compiled on CD-ROM; thus, page numbers are not applicable for these citations.


17 See Wilson, op. cit., at p. 262 for a comprehensive list of forest policy reform advocates which emerged prior to 1991.

18 See note 22 infra.

19 Created in 1990, the 31 member BCRTEE was tasked with, *inter alia*, finding better means for resolving land use conflicts. The Round Table supported, in general terms, consensus-based decision making and comprehensive land use planning.

20 The FRC was established in 1989 to review forest issues in B.C. and, *inter alia*, recommend mechanisms for improving public participation. The Commission advocated the creation of a Land Use Commission.

21 In November 1988, 51 individuals and 34 government agencies as well as public and private interest groups met at Dunsmuir Lodge and drafted an agreement on the need for a provincial land and water use strategy and the key elements it should contain. Through consensus, that group produced *The Dunsmuir Agreement on a Provincial Land Use Strategy*, which contained a mission statement, a set of objectives, and key implementation points for a land use strategy. Information on the Dunsmuir Conferences is available at www.luco.gov.bc.ca/dunsmuir
honest search for better approaches to public policy formation, discussions surrounding forest policy and land use planning in the early years of the 1991 government of Mike Harcourt centred on a number of ubiquitous terms: consensus, consultation, alternative dispute resolution, shared decision making, and interest based negotiation.

The focus here is on the background which informed the initial design of the Commission on Resources and Environment specifically. As Owen and Harcourt paced the sidelines of those Vancouver soccer fields, two specific documents would have contained the fundamentals of Owen’s position – both developed during his tenure as the province’s Ombudsman. And a major influence on his thinking lay in the work of MIT–Harvard Public Disputes Program as described by Lawrence Susskind and Jeffrey Cruikshank.

Susskind and Cruikshank drew on the experience of this program to provide a practical guide to consensus based strategies for resolving public disputes. They called their proposed technique **negotiated approaches to consensus building.** They cite four characteristics of a good negotiated agreement: fairness (as perceived by the participants), efficiency (not as compared to other decision processes but as a measure of increasing marginal benefit from continued negotiation), wisdom (embodying the most relevant information for addressing the problem), and stability (enduring agreements that are better positioned for implementation success); they claim that compromise agreements often fail to meet these tests.

The basis of the **negotiated approaches to consensus building** is that parties in public disputes should pursue their own self-interests, but should realise that where the attainment of those interests requires the support of other parties, the only viable solution is for the party to appreciate the needs of others in seeking to address their own goals. In many everyday disputes of relative simplicity, the parties to a dispute are able to work out an agreement. Where the parties to a dispute find it difficult or impossible to engage this understanding of the opposing interests, assisted negotiation – lying along a continuum of facilitation, mediation and non-binding arbitration – may be necessary. They conclude that consensus based approaches to public disputes are as much a fad as any other social reform effort initiated by government. That these fads fail to adhere is a function of their imposition from above: “[V]ery few people can be convinced to change their underlying sense of right and wrong … in response to a government edict.” However, Susskind and Cruikshank claim that when people become involved in consensus based negotiation, they become advocates for its further

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23 This assertion is based on a personal communication with Stephen Owen, now Director of the Institute for Dispute Resolution at the University of Victoria. Part of the “urban myth” surrounding CORE contends that the popular book *Getting to Yes* (Fisher, Roger and William Ury. 1981. *Getting to Yes: Negotiating Agreement Without Giving In.* Boston: Houghton Mifflin) was instrumental in the design and conduct of the Commission. While the book was (and still is) popular with the consultative cognoscenti, and was a basic reference to which CORE personnel and others pointed those interested in the principles of interest-based negotiation, it was derivative itself from the work of the MIT-Harvard Public Disputes Program (as described by Susskind and Cruikshank, below) and, as such, was not a source for the initial design of CORE.


25 Ibid., p. 246.
application. Thus while a consensus building process might struggle with initial hurdles and in a particular instance might not yield an effective solution, the process itself contributes to social learning which can lead people towards consensual approaches to resolving disputes in the future.26

By 1995, CORE had completed its initial task of developing regional land use plans in four areas of the province. Its 1994-1995 Annual Report27 provided a detailed discussion of the initial approach adopted and the lessons learned through almost three years of regional land use planning processes.28

Shared decision making,29 the objective of CORE’s approach, was designed to provide for direct and effective public participation in government decision-making. While not involving a formal change in governments’ authority or responsibility, shared decision making assumes that the public decision maker (i.e., the government) enters the negotiating process as an equal participant to all other parties. By engaging the statutory decision maker in the process,30 the expectation was that a consensus agreement would be implemented by the government. The Commission noted that one of the key elements of shared decision making was that the parties to the negotiation should be involved in the design of the process itself, as well as in the negotiation of the issues, including the initial determination of the negotiating approach to be taken – whether based on shared decision making or a more adversarial approach.

The key to shared decision making for the Commission was “interest based negotiation,” defined as a “structured, deliberate attempt by the parties to a dispute to co-operatively seek an outcome that meets the interests of all concerned.”31 As participants were introduced to the concept of interest based negotiation, they would have often heard phrases like “moving beyond positions to interests.” A party’s ideal outcome in a negotiation is their respective “positions”. Interests, however, were defined by the Commission as the fundamental goals and values that motivate the negotiator’s positions. If negotiating centres on the various positions on the table, the solution will necessarily compromise amongst the various positions. Interest based negotiation encourages parties to see beyond their bargaining positions and focus on the underlying interests – both their own and the other participants – to craft agreements which satisfy the concerns of all.

Jeremy Wilson provides a rich and detailed history of the CORE regional land use planning processes, pointing towards the hypothesis that the attempt at interest based negotiation was an overly optimistic philosophy in the polarised climate of B.C. forests.

26 See notes 35 and 38 infra and accompanying text.
28 The Commission was shut down on March 7, 1996 (see Wilson, op. cit., p. 290 and fn. 126), as it prepared its 1995-1996 annual report and positioned itself for a post-regional land use planning mandate (see Longo, Justin. 1996. Reporting on Progress Toward Sustainability: Coalescing Multiple Values Into One Snapshot. Report on an Co-op Work Term with the British Columbia Commission on Resources and Environment. Victoria, B.C.: University of Victoria, School of Public Administration).
29 See note 14 supra and accompanying text.
30 In CORE negotiations, government was represented at the table corporately – that is by one person speaking on behalf of the provincial government.
31 CORE, 1995, op. cit.
"It was naïve to think that CORE could engineer such a fundamental metamorphosis" as to engage mutual understanding as a political force in British Columbia.\(^{32}\) In the Cariboo-Chilcotin process, for example, a forest industry representative is quoted as having taken “control of the agenda by refusing to give any ground, by ‘getting in the faces’ of environmentalists and government bureaucrats, and by working to ensure that as many pro-logging groups as possible were seated at the table.”\(^{33}\) A more successful process in the East Kootenays is attributed to several factors: a long history of dealing with resource conflicts in the region; the self-imposed exclusion of some environmental groups from the process; and early attention to important foundational details prior to specific negotiations (including the division of the region into 137 land use planning “polygons” which provided the basis for negotiation and agreement).

Despite countless hours of discussion, negotiation and report writing, the land use plans were ultimately decided by cabinet using traditional political bargaining tactics influenced by domestic advocacy coalition pressure,\(^{34}\) a situation which ultimately led the government to abandon the shared decision making model in favour of more government-controlled land use planning processes. However, a more sanguine view of the CORE process holds that the seemingly endless debates about land use and resource constraints, environmental values and economic development laid the groundwork for the deals which were ultimately struck, reduced the mistrust that existed between antagonists, and “[b]y promoting better understanding of others’ perspectives, they helped clear the path towards compromise.”\(^{35}\)

In its observations of the conduct of the four regional planning process,\(^{36}\) the Commission drew several conclusions about the design and implementation of shared decision making.\(^{37}\) Of these, the key observations for the purposes of this present paper are:

- Shared decision making and interest based negotiation can contribute to positive sum outcomes when self-analysis, communication and understanding of each others’ interests leads to an agreement which simultaneously addresses the goals and values of all participants.
- Despite the ideal notion that the participants themselves should have control over the process, many participants concluded that shared decision making processes benefit from clearly defined terms of reference.
- Public interest negotiation does not replace traditional forums of campaigning, lobbying, legislative debate and judicial recourse in the policy-making process. But if participants neglect the negotiating process in favour of alternative forums, consensus will remain elusive.
- While consensus is one measure of success in a shared decision making process, with full agreement being the ideal outcome, where full agreement is not attained the

\(^{32}\) Wilson, op. cit., p. 291.
\(^{33}\) Ibid., p.269.
\(^{34}\) See ibid., pp. 278-289 for a detailed discussion of the politics of the regional land use decisions.
\(^{35}\) Ibid., p.291. See also note 38 infra and accompanying text.
\(^{36}\) CORE, 1995, op. cit.
\(^{37}\) See the Annex at p. 21 infra.
efforts of the participants can serve to narrow the conflict and inform the public decision making process.

- Whether or not the negotiation produces an agreement, the process can serve to build working relationships and mutual understanding among the participants which can have far-reaching future consequences.\(^{38}\)

Again shifting into the fifth discourse of international environmental enfranchisement as observed by David Cohen,\(^ {39}\) we can see a conflict, or at least an increased complexity, between the community based participatory processes that lie at the heart of the CORE mandate and the late 20\(^{\text{th}}\) century march towards globalisation in which political sovereignty represented by the boundaries of the nation-state has been transformed. Cohen refers specifically to economic forces of integration, but global civil society networks have also taken on a new life with the evolution of new communications technologies which make distance and remoteness less of an impediment, and diminish the handicap of smallness. David Ronfeldt, for example, explores how the information revolution favours the rise of these "organisational networks" and their efforts to promote alternative views internationally. Issue-oriented multi-organisational networks of NGOs are likely to be the main beneficiaries of the communications revolution as they use faxes, e-mail and the Internet to co-ordinate, consult and communicate and in the process undermine the stranglehold on power exerted by hierarchical networks – especially governments.\(^ {40}\)

Where diverse individuals, groups, networks or institutions holding a franchise other than that bequeathed by citizenship are excluded from the process of decision making, they will find a way to influence the outcome after it has been determined. Just as participatory processes which exclude certain domestic groups will reveal later problems during implementation,\(^ {41}\) the emergence of an international community of the environmentally enfranchised carries profound implications for the ultimate success of British Columbia land use and resource policy decisions. This globalising trend, proceeding in concert with international economic forces, has implications when considering Habermas’ concepts of “each” and “all”.

### 4.0 Habermasian Discourse Theory

Jürgen Habermas has been the leading intellectual figure in Germany for the past quarter century, but his work appears to have had limited impact in North America.

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\(^{38}\) This was the starting hypothesis of the Non-Profit Sector Research Initiative project on *Building Capacity or Straining Resources? Social Capital and the Non-Profit Sector in Threatened Rural and Coastal Economies* (see [http://web.uvic.ca/cpss/npsri](http://web.uvic.ca/cpss/npsri)), on which the present author is a co-investigator. Initial interview results suggest that the effect of planning processes on building trust and co-operation has not been universal, with some regions showing negative after-effects from CORE and other processes. However, in some instances there has been a marked increase in networks, co-operation and trust – the hallmarks of building social capital – which can be correlated if not linked causally to processes like CORE.


Thomas McCarthy notes that Habermas’ work was not addressed in the English speaking world until the mid-1970s.\(^{42}\) Kenneth Avio and Susan Pegler note that Habermasian thought has had limited impact on the economics profession,\(^{43}\) and reference to Habermas in the alternative dispute resolution and public consultation literature is considered exotic.\(^{44}\)

Habermas has spent his academic career examining the role of reason in modern society. The publication of his *Theory of Communicative Action*\(^{45}\) clearly stated his claim that discourse and communication were the only viable means for society to achieve freedom. For many however, the question remains as to whether Habermas’ abstract political and legal theory contains valuable insights for the pursuit of solutions to practical problems in our own particular political settings.

Habermasian discourse theory starts with the premise that communication entails an implicit commitment to co-operate to reach a mutual understanding. As such, Habermas’ work can give us hope that we are capable of making public decisions using participatory processes that are in the interests of everyone; i.e., we do not have to settle for compromises that seek to mediate between interests. As British Columbia evaluates the attempts to use interest based negotiation and shared decision making to solve conflicts over complex public issues, discourse theory can potentially shows us why public discussion and communication is important.

For the purposes of the present discussion, three recent works by Habermas are discussed: his 1993 paper “On the Pragmatic, the Ethical and the Moral Employments of Practical Reason”\(^{46}\) is used to compare the changing types of discourse in Habermasian theory to the “shifting discourses” in B.C. forest policy discussed by Wilson;\(^{47}\) his 1996 lecture “On the Cognitive Content of Morality”\(^{48}\) provides some guideposts for addressing moral problems through practical discourse; and the 1996

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publication of *Between Facts and Norms* which provided a rich discussion of the legal and political implication of his discourse theory.

**On the Pragmatic, the Ethical and the Moral Employments of Practical Reason**

When an individual or community is faced with a complex practical problem, classical ethics starts from the question: “what should I/we do?” In order to differentiate the various ways that practical reasoning can be applied to differently specified problems, Habermas identifies the important distinctions between pragmatic, ethical and moral questions. The moral point of view allows us to judge practical questions impartially, and is grounded in the communicative structure of rational discourse. Discourse ethics emerges from the Kantian moral tradition, and adopts a conception of morality that focuses on justice. But in doing so, it does not ignore the utilitarian calculation of consequences (pragmatic discourses) nor exclude discussion of the good life (ethical discourses). In this way, discourse theory relates in different ways to moral, ethical and pragmatic questions, and the distinct ways in which those problems are addressed. And just as the functions of practical reason change as we move from questions of the purposive (pragmatic), the good (ethical) and the just (moral), the relationship between reason and will changes as we shift between pragmatic, ethical and moral discourses.

Practical problems require a resolution. To achieve a desired objective, certain steps or tasks must be completed; in these cases, we consider the reasons for making a rational choice between possible courses of action. These objectives pursued through practical reasoning are not simple givens, however. These goals depend in the first place on our preferences and the options available to us, and we look for reasons for making a rational choice between different objectives. What is rational depends on what we want: when faced with a fixed objective, we make a rational choice between means; or we rationally assess possible goals based on existing preferences.

In the case of pragmatic questions of “what should I/we do?”, we are concerned with the most efficient or effective technique for meeting our goal. In such cases, appropriate decision rules such as efficiency might apply, based on empirical observation and assessment. Such purposive rationality has as its goal the determination of appropriate techniques, strategies, policies or programs for meeting our objectives. Pragmatic discourses share similarities with empirical discourses as they relate empirical observations and knowledge to preferences and goal determinations and allow us to assess the implications of differing choices. Recommendations which emerge from such practical reasoning get expressed as conditional imperatives which relate causes and effects, based on previously determined value preferences and goal determinations: i.e., *if* we want to meet objective A, we *ought* to follow the technical or strategic directions in set B when faced with a particular problem.

Once value preferences and goal determinations themselves are undecided, the question “what should I/we do?” no longer lies within the domain of purposive rationality but rather is oriented towards the more existential, identity based, question of what objective we would most like to achieve: what kind of person would one like to be or what kind of community would we like to have? The value decisions which flow from those preferences highlight the Aristotelian concept of the good life. Thus practical

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reasoning directed towards the good, not just the purposive, rests in the realm of ethics. The answers to the ethical questions of “what should I/we do?” are expressed as unconditional imperatives: i.e., to fulfil value set A, we must choose objective set B. Yet this imperative is not absolute: must should be understood as meaning that it is “good” for us to follow this answer in the long run if our values are to be accommodated.

The meaning of the question “what should I/we do?” takes a moral form when one’s actions have impacts on the interests of others, and conflicting interests must be resolved impartially. For pragmatic questions, one’s own preferences and goals are what matter; in strategic action, the goals of others act as potential constraints as each acts in their own self-interest. This conflict can be settled strategically (e.g., through power) or it can be resolved in the interests of all concerned – but only if those involved perceive the problem as a moral one. For ethical questions, the interests of others are important only to the degree to which they are related to the individual’s interests; the goals which are “good” for an individual are the same for those who share that person’s identity. But when conflicts arise as a result of opposing interests, ethical questions transform into moral ones.

The basis of a moral perspective lies in the compatibility of one’s maxims with the maxims of others. Maxims are defined by Habermas, following Kant, as situational decision rules which regulated daily life, interpersonal interactions, problem identification and the resolution of conflicts. They can be judged from either an ethical or moral point of view: a maxim may not be “good” for the individual if it deviates from one’s values; the same maxim may not be “just” if, were it generally observed, it is not in the equal interests of everyone. Maxims are only morally binding when they take on the characteristics of norms: generalisable rules which address the perspectives of all affected. Therefore the answers to moral questions are, as with ethical problems, expressed as unconditional imperatives that express or refer to norms. However, they are not expressed in terms of one’s goals but as a condition for justice.

The content and goal of discourse also changes as we move through pragmatic, ethical and moral problems. The discourse principle ‘D’, which can apply to either pragmatic, ethical or moral discourses, states that:

Only those norms can claim validity that could meet with the agreement of all concerned in their capacity as participants in a practical discourse.\(^{50}\)

The discourse principle leaves open the type of process by which agreement is reached. Pragmatic discourses require compromises (discourses of compromise), ethical discourses seek clarification of a collective identity (discourses of self-clarification), and moral discourses seek justice (discourses of justification and application).

Thus, the question of what a person or group should do can acquire a pragmatic, ethical of moral meaning depending on how the problem is conceptualised. Each approach requires that alternative decisions be justified, but the kind of answer and action differ as we move from the pragmatic to the ethical to the moral. Recommendations which flow from a pragmatic discourse centre on appropriate technology or a strategic program of action. Ethical discourses yield existential clinical advice according to a set of values or preferences. Moral discourses provide agreements for the just resolution of

\(^{50}\) Habermas, 1996a, op. cit.
conflicting interests based on shared maxims or norms. Our approach to accepting this advice or recommendations also changes as we change our orientation from the purposive, the good or the just. The “ought” of pragmatic recommendations is addressed to the choice of the purposively oriented person; advice from ethical discourses focuses on the resoluteness of the addresses commitment to the good life; and moral injunctions are directed to the autonomous free will. In each instance, the relationship between reason and will is altered, as is the concept of practical reason itself.

On the Cognitive Content of Morality

The moral rules of a community not only govern how its members should act; they also provide for the consensual resolution of conflicts. Moral obligations are advantageous because of their rational force of reasons which is less costly than other forms of conflict resolution (such as direct force or influence based on sanctions and rewards). Discourse ethics does not reduce morality to equal treatment; rather, moral discourses must account for both justice and solidarity.

A conceptualisation of discourses of justification casts moral discourses as a public act in which criticisable validity claims are defended with good reasons. To avoid an infinite regress of discourse, the procedural characteristics of the process of argumentation itself must ultimately bear the burden of explaining why the outcome of a procedurally legitimate process are presumed legitimate. For example, rational discourse demands a preformed supposition that all relevant contributions are afforded an opportunity to be heard and that the “unforced force of the better argument” is the sole criteria for establishing a claim’s validity.

The discourse principle tries to resolve the modern dilemma in pluralistic societies where moral disagreements are still predicated on reasoned rational argument, yet there no longer exists an all encompassing consensus on basic moral norms and values. If the members of the community still wish to resolve their conflicts through communication, rather than coercion or compromise, even an effort to work out a shared determination of an ethical self-understanding, they will stall at the point of advancing competing conceptions of the good life.

If the members of a community remain committed to resolving their conflicts through deliberation, they will need to rely on the shared features which led them to engage in practical reasoning in the first place. The practice of deliberation thus has some intrinsic features which show a way out of the modern post-metaphysical pluralistic predicament.

Habermas believes these intrinsic features provide the basis for a theoretical justification of a moral approach to resolving conflicts. First, instead of searching for shared moral norms as a starting point, the participants must appeal to the practice of deliberation based on the discourse principle. And second, the discourse principle poses a hypothetical condition for resolving conflicts in pragmatic, ethical or moral discourses: the condition which valid norms would fulfil if they could be justified. In order to justify moral norms, what is still required is a rule of argumentation to make this principle operational. Thus, the Universalisation Principle (U-principle) states that:
A norm is valid when the foreseeable consequences and side effects of its general observance for the interests and value-orientations of each individual could be freely accepted jointly by all concerned.\(^5\)

The “interests and value-orientations” conditions allows the pragmatic and ethical reasons of the participants access to the discussion, in order to promote a broad spectrum of worldviews. The conditions for reciprocal perspective taking (“of each” and “by all”) requires not just empathy (Habermas’ concept of “ideal role playing” or Mead’s “taking the position of the other”) but the openness of participants to revising their preferences in light of the arguments of others. And the condition that norms be “freely accepted jointly” requires that agreement be based not just on the same things but for the same reasons.

Habermas provides some thoughts on how the discourse ethics concepts might be realised in practice. We engage in argumentation with the hopes of convincing one another of the rightness of our validity claims based on a co-operative competition to find the better argument. This orientation towards a communicatively reached agreement unites participants from the beginning. That this competition can lead to rationally acceptable results rests on four key features of the process of argumentation which hold:

1. that nobody who could make a relevant contribution may be excluded;
2. that all participants are afforded an equal opportunity to make contributions;
3. that the participants must mean what they say: only truthful utterances are admissible; and
4. that communication must be freed from external and internal compulsion so that the ‘yes’/’no’ stances that participants adopt on criticisable validity claims are motivated solely by the rational force of the better reasons.\(^5\)

For moral questions, when we claim that what we say is right, we mean that we could defend this claim in an ideal communicative setting, that our good reasons could convince others that the claim is right. Given enough time, assuming participants who are engaged in the conversation and oriented towards reaching an understanding, and a discussion environment free from coercion, we make our claim based on the belief that everyone would come to the same conclusion. Moral discussions are about universalising one’s maxims into norms such that everyone would agree with my claim. Of course, this outcome cannot be tested: e.g., how can we know that everyone has had an opportunity to speak? But to undertake such discourses in actual social settings in order to test for universalisation ensures that a fully justified outcome will never be reached, since the ideal speech situation can never be reached in the real world. “Every actual consensus is always a finite consensus and so never a universal consensus.”\(^5\)

Is it more reasonable, then, to think of the concepts of discourse theory as a model of democratic legitimation rather than as a model for moral validity? Moral validity, through

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\(^{51}\) Ibid., p. 354.

\(^{52}\) Ibid., p. 356.

the principle of universalisation, transcends real communities and jurisdictions; but
democratic legitimacy is functionally related to actual communities.

Between Facts and Norms

How might we deal with pragmatic, ethical and moral questions in our current political
system? In parliament, political questions first arise is pragmatic form: a purposive
rational choice of collective goals and strategies is made based on established value
preferences. Processes of pragmatic justification by the legislature start with an
appropriate description of the problem and require expert knowledge and reliable
information – which is naturally fallible and rarely value-neutral, thus dependent on
preferences which involve interest positions and value orientations. These interests and
values then compete in advancing different proposals for addressing the problem. When
the value orientations themselves come up for discussion, a change in the type of
discourse is required.

The issue may be ethically relevant, calling for discourses that push beyond contested
interests and values and engage the community in a deeper process of self-
understanding. Or, the issue may be morally relevant, in which case discourse submits
the contested interests and value orientations to a universalisation test. In complex
societies, however, it is often the case that neither of these approaches is possible; for
example, if the problem under discussion is of multiple dimensions having an impact on
a diversity of interests, or where the rational discourse supposition that social power
structures be neutralised cannot be achieved. Thus, no generalisable interest or clear
prioritisation of values is possible. In such cases, Habermas points to bargaining
between parties willing to co-operate as a possible alternative, and quotes Jon Elster on
the likely conditions for bargaining: “Bargaining occurs when there are several co-
operative arrangements and the parties have conflicting preferences over them.”54

Bargaining aims at compromises that the participants will find acceptable, where the
compromise provides for an arrangement that satisfies three conditions:

1. it is better than no arrangement;
2. it excludes free riders who do not co-operate55; and
3. it does not exploit parties who contribute more than they gain.

The compromise that results from such bargaining contains a negotiated agreement
that balances conflicting interests. A rationally motivated consensus rests on reasons
that convince all parties in the same way; a compromise agreement can be accepted by
the parties for different reasons.56

quoted in Habermas, 1996b, op. cit., p.534 fn.30.

Institute for Contemporary Studies Press) has noted that some institutions designed to manage common-property
resources have succeeded in overcoming the logic of collective action. This is accomplished through clearly defined
boundaries, rule-making by the affected parties, graduated sanctions for violators, and low cost conflict resolution
mechanisms. In the case of small scale common property resources, “when individuals have lived in such situations
for a substantial time and have developed shared norms and patterns of reciprocity, they possess social capital with
which they can build institutional arrangements for resolving [common pool resource] dilemmas.” (Ostrom, p.183).

56 Thus we see the differences in language between Habermas and the interest based negotiation school: what
CORE called consensus, Habermas would call compromise; what CORE called a compromise agreement would not
be an agreement in Habermasian terms.
It is not possible to introduce the discourse principle directly into bargaining processes because parties resort to threats and promises. But in the absence of any indirect impact of the discourse principle, “the discursive chain of a rational will formation would snap at such points of compromise.”

This indirect route lies in procedures that regulate bargaining with an eye to fairness. While social power structures cannot be neutralised, they should at least be disciplined through regulations aimed at fairness. If negotiation procedures provide all the interested parties with an equal opportunity to pressure and influence other parties during the bargaining, and if all affected parties are brought into the negotiation and have an equal chance of prevailing, “there are grounds for assuming that negotiated agreements are fair.”

Such procedures can ensure fair agreements among parties, but this is not akin to mutual understanding among participants in ethical or moral discourses, where participants discuss criticisable validity claims and act communicatively to mutually convince one another. But fair negotiation does not operate in complete isolation; for the procedural conditions that regulate fair negotiation must themselves be justified in moral discourses. And the recourse to bargaining rests on a determination that only particular interests are involved – something that can only be tested in moral discourses. Compromise through bargaining cannot replace moral discourses, and fair bargaining does not nullify or make obsolete the discourse principle; rather, fair negotiation presupposes it.

Thus, discourse theory understands consensus and compromise as distinct types of agreement. Consensus is the objective of moral discourses in which participants, acting communicatively, justify their claims and come to a mutual understanding for the same reasons. For discourses that do not achieve consensus, parties may have to resort to negotiation and bargaining in order to forge a compromise. However, consensus is always theoretically attainable, even where the participants start with different value sets.

5.0 Imagining CORE Under Habermasian Principles

There is no evidence to suggest that Habermas’ work in discourse theory had a direct impact on the MIT-Harvard Public Disputes Program or, whether by extension or independently, on the design and conduct of the Commission on Resources and Environment. Yet a comparison of sections three and four, above, points to a central conclusion here: despite problems with comparative language between the two fields, the applied practical work in interest based negotiation is remarkably consistent with the abstract concepts inherent in discourse theory. In fact, were one not led to believe that interest based negotiation appears to have no formal link to discourse theory, we might think that consensus building public discussion processes were simply an applied version of Habermasian principles. While the criteria embodied in the U principle are likely impossible to satisfy in practical terms, the efforts of interest based negotiation proponents to include a broad range of interests and engage those stakeholders in a process of mutually addressing the interests of all participants aims at a reasonable

57 Habermas, 1996b, op. cit., p.166.
58 Ibid., p.167.
59 A key condition for this merging of values is the practice of ideal role-taking (see ibid., p. 228).
impression. And Habermas' appreciation of the need for fair bargaining as a fall-back from moral or ethical discourses appears in many respects to resemble the conditions for fair negotiation in the shared decision making model.

One can of course only speculate on the content of a fictional Owen/Harcourt/Habermas discussion on the sidelines of a Saturday morning soccer game (including, perhaps, discussion of Germany's prospects for the World Cup). But given the conclusion that the basic principles of interest based negotiation and discourse theory are more different by degree than by kind, the hypothesis suggested here is that such a discussion would centre on the question of whether forest land use policy in British Columbia was a pragmatic, ethical or moral problem.

While Habermas might note that “there is no metadiscourse on which we could fall back to justify the choice between different forms of argumentation,” Jeremy Wilson's observations on the “shifting discourses” of forest policy over the past 100 years in British Columbia would clearly argue that the mid-1960s witnessed a definitive shift from a pragmatic to an ethical-political conceptualisation of public decision making on the issue of B.C. forest land use. As minimally constrained development and its regulated version of scientific based sustained yield gave way to multiple use–integrated resource management, discourse surrounding B.C. forest resources clearly shifted from a pragmatic approach of how to most efficiently and effectively deal with the transformation of trees into resources to a later ethical-political discourse centring on a broader understanding of the value of forests. Rather than viewing wilderness as a chaotic system requiring order and a resource to be exploited, the question of what kind of place British Columbians wanted to create and sustain became the central focus of this component of public debate.

What would remain a subject for debate in this fictional conversation is whether the shift to a conservation biology paradigm in the mid-1980s or – I would argue what is more crucial – the emergence of the “environmentally enfranchised” international community would signal an evolution of the issue into a moral question. Both developments represent some of the micro-ideas that lie under the umbrella of the broad concept of sustainability. But within this paradigm, the tendency towards biosphere politics – which serves to minimise the rhetorical power of borders and national sovereignty – lies juxtaposed to the principle of subsidiarity and demands for local control over decision making. Is Clayoquot Sound: a matter for scientific management rooted in either sustained yield forestry or conservation biology; an issue of ethical consideration for the residents of the area (engendering a debate between preservationists and resourcists – both motivated by their own socio-economic interests); a matter for province-wide political deliberation (centring on the best use of a large rainforest ecosystem near to major urban centres that also represents a major timber source); or a moral issue of global importance (that happens to be spatially located within British Columbia)?

It does not seem likely that Habermas would provide an easy answer to the question of whether we should address the question of forest and land use practices in B.C. as a problem from the purposive, the good or the just perspective except to say that to do so reasonably requires a network of public forms of communication and practices in which the conditions of rational collective will formation have taken on concrete institutional form. Thus while he would not have criticised the design or objectives of CORE as

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60 Habermas, 1993, op. cit., pp. 16.
proposed by Stephen Owen, he might have argued that a broader forum of discussion might first serve to frame the question outside of the interest based “stakeholder” approach of negotiated consensus.\textsuperscript{61} While such a discussion about the content and nature of the problem would have had little effect in moving closer to a resolution of the “war in the woods”, it might have served to clarify whether B.C. forest and land use issues had indeed evolved into a question for moral discourse.

\textsuperscript{61} See, e.g., Chambers’ (op. cit.) discussion of the \textit{Citizen’s Forum on Canada’s Future}. 
References


Annex

Observations on the CORE Experience from the Commission’s 1994-1995 Annual Report\textsuperscript{62}

1. Government must provide clear direction and explicit terms of reference, in order that its expectations are known to prospective participants.

2. Information which all parties have access to and are confident in is necessary. Such information provides a technical and scientific foundation for the planning process, and the basis for negotiation.

3. Shared decision making and interest based negotiation can contribute to positive sum outcomes when self-analysis, communication and understanding of each others’ interests leads to an agreement which simultaneously addresses the goals and values of all participants.

4. The general right of citizens to participate in public consultation and negotiation processes is accompanied by the state’s legitimate expectation that participating citizens will do so in good faith and with the public interest – as well as their own interest – in mind.

5. Open, inclusive and balanced representation of the full range of interests is essential. Exclusion of particular interests will only ensure an agreement that cannot be effectively implemented and will not be seen as legitimate.

6. Government should participate directly in public policy negotiations. In the absence of government, the non-government participants may reach an agreement that the government finds unacceptable. Rejecting the consensus decision of such a group would undermine public confidence in negotiation as a means of public participation.

7. On the other hand, such processes should not be overwhelmed by a government presence; having a single corporate representative for the government helps to avoid this problem.

8. Participants representing groups or other individuals must be able to authoritatively speak for the interests they represent and be accountable to them.

9. The roles and responsibilities of all parties, including the government, must be universally clear amongst the participants, as must be the process and contingencies for dealing with a breakdown in the process.

10. The roles of the negotiating forum’s sponsoring agencies must be clearly communicated and understood.

11. The greater the “readiness” of all participants, the more effective and efficient will be the process.

12. Despite the ideal notion that the participants themselves should have control over the process, many participants concluded that shared decision making processes benefit from clearly defined terms of reference.

13. Despite initial enthusiasm from participants, government and sponsors, shared decision making processes do not necessarily result in a consensus outcome. Expectations must be placed in a realistic context from the start.

14. Public interest negotiation does not replace traditional forums of campaigning, lobbying, legislative debate and judicial recourse in the policy-making process. But if participants neglect the negotiating process in favour of alternative forums, consensus will remain elusive.

15. While consensus is one measure of success in a shared decision making process, with full agreement being the ideal outcome, where full agreement is not attained the efforts of the participants can serve to narrow the conflict and inform the public decision making process.

16. Long-term, subjective, criteria such as the balance, effectiveness and durability of a shared decision are useful ways of evaluating negotiated outcomes that fall short of consensus.

17. Whether or not the negotiation produces an agreement, the process can serve to build working relationships and mutual understanding among the participants which can have far-reaching future consequences.

\textsuperscript{62} See CORE, 1995, op. cit.