A critique of the narrowing of morality to justice

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There are different classifications in the field of moral philosophy and perhaps the most widely used is the one that differentiates between „consequentialist" and „deontological". It is, in fact, better to call this classification the duality of the preservation and the annihilation of public morality because dominant contemporary moral theory has been showing unmistakable signs of the latter tendency. This little study would like to outline this development and emphasize the fact that the initial suppression of public morals by the deontological ethics has the last consequence of eliminating morality as such for the benefit of the law reached by the theory of Jürgen Habermas.

1. Public morality and personal morality

In the last century two opposing positions in the field of moral theory are recognized as dominant. One of them was formulated by Hegel and later by Rudolph von Jhering and Nicolai Hartmann, and is now mainly defended by the communitarian moral theories (eg, McIntyre, Michael Sandel, Michael Walzer, Charles Taylor). It claims that in the life of a community there are several moral standards and these are always socialized, appropriated - in a word internalized - by the members of the most recent generations, and they consequently become a facet of the consciences of these individuals, which they consult in the case of any of their actions. Externally, these standards are protected by the disdain of the community directed against their potential violators. In connection with this position it may be further mentioned that the existing moral standards can be reflected by the conscious moral theory (critical morality), but they cannot be changed.

The opposing view was founded by Immanuel Kant in the individualistic mentality of the Enlightenment, and today it is primarily represented by the works of John Rawls and Jürgen Habermas. This position locates the moral aspect in the individual consciousness, thereby implicitly overlooking the widespread public morality of the community. From this it follows that the already existing moral standards of the community do not put any restraint on the individual moral decision, and the annihilation of public morality can be a methodical consequence of the starting point - as with Kant - or it can be stated with reference to historical change - as with Habermas - that the once still important public (common/conventional) morality had been dissolved in modernity and today only the conscious moral discourse exists (or should exist). In the following analysis these two positions are systematically contrasted. In order to attempt an evaluation of the truth of their statements, the empirical investigation of morality by Lawrence Kohlberg will be outlined.

1.1. Rudolf von Jhrering's theory of morals and manners

As a starting point, let us recall the legal and moral philosophy of Hegel, whose footsteps Jhering followed in. Hegel's position, which emphasized public morality, is as follows:

„Aber in der einfachen Identität mit der Wirklichkeit der Individuen erscheint das Sittliche, als die allgemeine Handlungsweise derselben, als Sitte, - die Gewohnheit desselben als die zweite Natur, die an die Stelle des ersten bloß natürlichen Willens gesetzt und die

durchdringende Seele, Bedeutung und Wirklichkeit ihres Daseins ist, der als eine Welt lebendige und vorhandene Geist, dessen Substanz so erst als Geist ist."[1]

In the Annex to this passage he points out that education is an activity that enables people to learn the norms of objective morality. This can only be effective if these norms are ultimately adopted by the individuals and they become their customs. This is how morality and custom are interlinked.

In his moral theory, Rudolf von Jhering in the 1870s followed Hegel's theses and pointed out that the moral sense in the individual consciousness of community members, which had, by the dominant moral theories, been usually seen as the last "bearer" of morality ("Träger der Moral"), was merely derived from the moral conscience of the community. Before the appearance of the moral sense of individuals, there existed in the community certain moral standards, which were merely socialized by the individuals and although the decisions about the proper ways of acting of the individuals is in most cases perceived subjective as a result of the conduct of conscience, may the researchers did not accept the morality in this erroneous way. He wrote:

„The relation of the objective moral order to which I include in addition to the rights of the morals and manners, and the subjective moral feeling completely turned around for me, not the latter appeared to me more as the source of the former, as the prevailing theory states, but the former as of the latter. All moral norms and institutions have, in my opinion their last base in the practical purposes of the society." [2]

Morals and customs function as necessary preconditions of human communities and Jhering gives the explanation for their historical forms of social evolution. The initial integration of the living conditions of the ancient communities with their physical environment, which was dominated only by physical violence, could be identified with the virtues of physical strength. In fact, the Latin words „vis" and „virtue" show this origin in many of today's languages. Only on a more advanced level will the identification of the moral virtues with the sublimated values appear and come closer to our words and terms of moral values. In this development, the undifferentiated set of standards of accuracy was broken and for the standards which determine the mere external behavior became prevalent the name of the manners (etiquette, courtesy), and on the other hand the inner sense of morality appeared separately in European history and the name of morality is used only to the standards which involve the inner sense at the acting.

Besides the word „legal," Jhering used two words for the depreciation of the moral and ethical world. One is the „Sitte" (custom), which used to include the whole sphere, but now means only the standards of the external manners and appropriate forms of speech. The other is the „Sittlichkeit" (morality) which involves the inner emotional attitude in addition to the external behavior. To illustrate the historical differentiation of the standards in the world of European culture, Jhering gives a brief description. In his analysis the Greek word „*dike*" included even the whole world of standards of right action, and still the aesthetic side of the action was captured and it meant the good and the beautiful undifferentiated. That the lower levels of the

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[1] G. W. F. Hegel, *Grundlinien der Philosophie des Rechts.*Werke Band 7, (Frankfurt am Main: Suhrkamp [1821] 1979) p.301.

[2] R. v. Jhering, *Der Zweck im Recht. Zweiter Band.* (Leipzig: Druck und Verlag von Breitkopf und Härtel. Leipzig. [1883] 1898) p. X.

history of human communities were characterized by this specialty is likewise shown by ancient Hebrew culture, where the „*mishpat*" included the entire legal, moral world and custom - with the slight difference from the Greek „dike", that in the „*mishpat*" the derivation from the divine commandments was emphasized. He wrote: „Everything is *mishpat*: The law of mere ritual, which is consistent with our 'custom' as the Ten Commandments, in which morality and law are still undifferentiated side by side. The same thing is true of the dharma of the Hindus." [3] This uniform world began to be differentiated in Rome, where law and morality were increasingly separated, but custom was still included in morality. To differentiate between mere external behavior (today "manners") and emotional moral act, the Romans had no special words, and both were described with the „mos" („mores"). In the course of the development of (German) language, the external aspect of the act - isolated from the inner feeling accompanying action - receives the separate expression „Sitte," while "Sittlichkeit" will come to stand for "morality" and describe the internal aspects.

Jhering explains the difference between moral good and evil on the basis of the existence conditions of the societies and in opposition to Kantian ethics the human acts are according to him not inwardly good or evil but it depends on whether certain acts for the purposes and functions of the society and for the proper existence of society can contribute or not. Good and evil are determined by society like all other standards, and under different social conditions (and in relation to the associated conditions) the same standards will be qualified differently; once they are good and at other times evil. To furnish this with an example, something that is in times of peace the greatest sin (killing), is a moral imperative in times of war. The moral obligations are explained by Jhering as the fulfillment of the living conditions of society: „Duty is the determination of the actions of the person for the purposes of the society." [4] Although the individual is capable of securing his own subsistence by his own egoism, ultimately he is a social being and can only exist within a community. As his existence can be achieved only within a human community and the existence of communities can be secured via the observance of the moral virtues and norms, (s)he is driven to observe these.

1.2. Nicolai Hartmann's ethics

Hartmann wrote his ethics in the late 1920s. He went against Kant's subjective moral theory and followed Hegel instead, especially in his monograph completed in 1932, where he analyzes the intellectual structures of the social world and the individual's spiritual development. He outlined the development of individual consciousness as its impregnation with the stored-up spiritual values, norms, and symbols of communities.[5] In his general thesis on the relationship between the intellectual sectors of communities and the development of individual consciousness, he observed the process of individual development as the spiritual transformation of the mere psychological soul of individuals into the intellectual consciousness imbued with the values, virtues, norms and other intellectual contents. Hartmann emphasized that in human communities, objectified intellectual content - legal norms, moral values and rules, art experiences and knowledge etc. - can be socialized by the

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[3] Jhering, *Der Zweck im Recht. Zweiter Band,* p. 52-53.

[4] Jhering, *Der Zweck im Recht. Zweiter Band,* p. 227.

[5] See: Nicolai Hartmann, *Ethik.* (Berlin: Walter de Gruyter Verlag, [1925] 1962); Nicolai Hartmann, *Das Problem des geistigen Seins. Untersuchungen zur Grundlegung der Geschichtsphilosophie und der Geisteswissenschaften,* (Berlin:Walter de GruyterVerlag, [1932] 1962).

individuals only with the emotional bases of the moral sense, of the sense of justice, of the sense of the beautiful etc., and in the individual consciousness the intellectual contents are always anchored in the unconscious senses. This is to say that in human actions the intellectual contents work together with the more unconscious senses. Furthermore, the spiritual values, principles, standards and kinds of knowledge in human thinking and action cannot work alone, but only by working together with their emotional phenomena. For that very reason Hartmann stresses the possibility of slow change in morals and he sees the aspirations of the transformation of morality by moral theories as futile and disturbing. He writes:

„Das Ethos aber vergegenständlicht sich auch in der „objektivierten Moral". Damit tritt ein zweites Moment neben das rein empfundene Gelten, gleichsam als zweites, äußeres Gelten. Moral eben ist mehr als lebendiges Ethos. Sie ist die Ausprägung gewisser Typen wertvollen Verhaltens in bestimmten Bergriffen, in denen die Wertnuancen eingefangen und für jedermann verständlich objektiviert ist. Begriffe solcher Art sind wohlbekannt als die von „Tugenden"; ihre ebenso festgeprägten Gegenstücke sind Begriffe von „Untugenden", oder „Lastern". Aller herrschend gewordene „Moral" bewegt sich in solchen Begriffen. Aber ebenso wohlbekannt wie sie selbst ist auch das Odium, das ihnen anhaftet. Nichts ist im lebenden Geiste steriler, nichts neigt so sehr zum „Absinken", nichts ist so hemmend im Fortschreiten des Ethos als die Tugend- und Laster-begriffe. Nichts zieht so sehr wie sie die Moral herab von ihrem echten Wert- und Ideengehalt. Sie sind es, die auf die Dauer stets der echten Moral ein „Moral" im schlechten Sinne vorschreiben, mit der sich dann freilich sehr bequem und stereotyp „moralisieren" läßt. Die wirkliche Moralität, wo überhaupt sie besteht, läßt die objektivierte Moral hinter sich, empfindet sie als leblosen Formenkodex, der mit ihrer Bewegung nicht Schritt halt." [6]

As a starting point Hartmann claimed that in human history there are numerous moral values, virtues and clusters of moral principles and in order to achieve unity, these should not be placed in such a way that their plurality is eliminated and only one of them is placed in the center. Instead, the individual parts of this multiplicity must be placed in relation to each other and step by step a specific unit can be achieved theoretically. In this way, the colorful multitude of moral life can be preserved and the impoverishment of abstract moral systems can be avoided. He claims that there has been a tendency in Kantian philosophy to oppress the colorful moral values and virtues and to represent morality as a choice between the abstract good and evil. He writes:

„Seit dem Aufkommen der „kritischen Philosophie" ist man gemeinhin besorgt gewesen, so wenig als möglich Gegebenes anzuerkennen, die Basis von Voraussetzungen so schmal als möglich anzulegen – aus dem sehr einleuchtenden Gefühl heraus, daß jedes hinzugenommene „Gegebene" angefochten werden und dadurch dem Basis zum Einsturz gereichen kann. Diese Tendenz führte zur Auslese des Gegebenen." [7]

Then, Hartmann highlights the achievement of Max Scheler, who, in his ethics in 1913, broke with the setting up of an abstract moral system and re-established the existence of a colorful multitude of moral values and principles in moral theory.

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[6] Hartmann, *Ethik,* p.526-527.
[7] Hartmann, *Ethik,* p. 63.

To understand the rejection of the public morality of communities by Kant, Hartmann's emphasis is important, because it claims that this rejection is only a consequence of the broader theoretical framework of Kantian philosophy. The whole Kantian philosophy is based on the subject, and space and time, for instance, are not objective categories but only the categories of classification in the individual consciousness. Furthermore, the unity of objects is not from the outside world, but from the synthetic unity of consciousness. It follows, therefore, that the subjectivity and consciousness are dominant throughout the Kantian philosophy and the objects and social phenomena are the consequences of this subjective inner world, and they do not exist objectively outside. Hence Kant shows merely a methodological consistency when he insists on the cancellation of public morality, and its substitution with the categorical imperative:

„So ist es sehr wohl verstehen, daß gerade in der Ethik die Kantishe These von der Spontaneität des Subjekts eine Art Bestätigung erfährt. Das „Sittengesetz" drückt eine Forderung aus im Gegensatz zu den realen Verhältnissen des Menschenleben. Es liegt also durschaus Konsequenz darin, wenn die Kritik der praktischen Vernunft behauptet, das Subjekt gebe hier das Gesetz; in ihm und nicht im Objekt liege der Bestimmungsgrund." [8]

For the focus of our analysis - the critique of the narrowing of morality - the most important objections of Hartmann against Kantian ethics can be found where he outlines the colorful variety and the diverse moral values and virtues in Plato, Aristotle and the Stoic ethics, and he claims that Kant narrowed the moral world and in place of the external variety of moral values and virtues put the one-dimensional creations of consciousness:

„Denn Kant ist es, der an Stelle der inhaltlichen Mannigfaltigkeit der Tugenden die Einheit eines Sittengesetzes, an Stelle der materialen Erfülltheit das formale Prinzip, an Stelle des objektiven Wesens sittlicher Ideen die subjektive Gesetzgebung gesetzt hat." [9]

Hartmann often repeated his assertion that there are always some opposed moral values and virtues which in the same situation for an act appear as binding and hence the actor must always weigh between them. This way, the mere knowledge of the abstract moral values cannot be of assistance, and only the knowledge of the relations and hierarchy among the moral values and virtues in each situation can point towards the right decision. The norms of public morality contain this knowledge and that is the reason why they are important:

„Alle Werterkenntnis bleibt abstrakt ohne Erkenntnis der Wertbeziehungen. Sind doch in allen ethischen Situationen mannigfache Werte zugleich beteiligt, und liegt doch für den Menschen, der vor Situation gestellt ist, die Aufgabe eben darin, sein Verhalten aus dem Situationsbewußtsein heraus einzurichten, welches Wert gegen Wert abwägt." [10]

Before finishing off the analysis of Hartmann's ethics, it is still worthwhile to quote his opinion against the one-dimensional construction of the moral world which claims that the moral virtue can only be realized as a synthesis of several values:

„Gesucht ist gerade ein Einheitsethos von Reinheit und Fülle, von Gerechtigkeit und Nächstenliebe, von Stolz und und Demut. Erst ein solches würde in einem höheren und

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[8] Hartmann, *Ethik,* p. 100.
[9] Hartmann, *Ethik,* p. 137.
[10] Hartmann, *Ethik,* p. 271.

strengeren Sinne „Tugend" heißen dürfen, während die einseitigen Werte nur uneigentlich den Namen verdienen" (Hartmann 1962:574). In an other version this thought can be read: „Jeder Wert hat - wenn einmal Macht gewonnen hat über eine Person - die Tendenz, sich zum alleinigen Tyrannen des ganzen menschlichen Ethos aufzuwerfen, und zwar auf Kosten anderer Werten, auch solcher, die ihm nicht material entgegengesetzt sind (…) So gibt es einen Fanatismus der Gerechtigkeit (fiat justitia pereat mundus), der keineswegs bloß der Liebe, geschweige denn bloß der Nächstenliebe, ins Gesicht schlägt, sondern schlechterdings allen höheren Werten." [11]

2) Sociological investigation of morality

Before the transition to the description of deontological moral theory, let us quickly observe the results of the empirical sociology of morality, which can give an empirical answer to the question whether people in everyday life follow the rules of public morality - as the theories of Hegel, Jhering and Hartmann claimed. To answer this, the results of Lawrence Kohlberg's investigations are indeed helpful.

These results show the following picture in relation to the development of the moral consciousness of children.[12] The moral development of children has different stages and at first it is characterized by the mere avoidance of punishment and a desire for reward from the external authority. Later this attitude changes, and the roles of "the good boy", "the nice girl," and subsequently that of "the brave father" and "the honest woman" etc. appear and become socialized by the boys and girls. These are already more abstract standards, and are applied to the situation in a more autonomous fashion. This is the stage of conventional morality and Kohlberg assumed that there is a post-conventional phase (comprising two inner levels) where the attention of the external public moral standards decline and the individuals always decide on the basis of universal principles. Tests were made in different countries - the USA, Turkey, Mexico, Thailand - and the results invariably showed the dominance of the conventional public morality. Only on the lower level of the two-stage post-conventional stage did the empirical studies find 7 percent of people who had a critical stance in relation to public morality, but almost no one could be found in the last stage.[13] Even in connection with the 7 percent there was a criticism that the 7 percent could be found solely on the lower level of the post-conventional phase, because the highly educated individuals and the inhabitants of big cities were represented in the survey, too, and usually this number is even lower.

From the results of Kohlberg it is thus clear that public morality exists in contemporary societies and the huge majority of people follow the norms of public morality and in everyday life everybody is judged by its environment, whether it complies with those standards or not.

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[11] Hartmann, *Ethik,* p. 576.
[12] See: Lawrence Kohlberg, 'From is to ought. How to commit the naturalistic fallacy and get away with it in the study of moral development', in: Th. Mischel (ed.): *Cognitive development and epistemology* (New York: Academic Press, 1971) pp. 151-235; Georg Lind, 'Entwicklung des moralischen Urteilens - Leistungen und Probleme der Theorien von Piaget und Kohlberg', in: Lind/Hartmann/Wakenhut (hg.): *Moralisches Urteilen und soziale Umwelt. Threoretische, methodologische Untersuchungen,* (Weinheim und Basel: Beltz Verlag Weinheim, 1983) pp. 25-40.
[13] See: Rest, J./Narvaez, D./Bebeau M.J/Thoma S. J. (eds.) *Postconventional Moral Thinking: A Neo-Kohlbergian Approach*, (Mahwah: Lawrence Erbaum Associate Publishers, 1999) p. 22.

3. The elimination of public morality: the critical morality

3.1. Kant's moral philosophy

The most important characteristic of Kantian moral theory is that it limits the moral aspect of action to the inner mind, and the moral assessment of an agent depends on his consciousness; on whether the agent's action took place with respect of the obligation. If he was driven by any other motivation - such as the fear of legal sanction - besides a respect of the obligation, then this action cannot be judged as moral good. Morals in Kantian theory have only a formal framework for the moral guidance in various situations; this is the categorical imperative. Kant wrote: „Der kategorische Imperativ ist also ein einziger, und zwar dieser: handle nur nach derjenigen Maxime, durch die zugleich wollen kannst, dass, sie ein allgemeines Gesetz werde." [14] Thus, morality in Kantian theory is an aspect of individual choice with such a formal framework that any chosen action has to have a universal applicability. In addition to the universal applicability, the second trait of moral decisions is autonomy, which means that they are free from material motivations and any particular external expectations and they are totally motivated by respect for moral duty. The autonomous individual disregards social ties and connections in Kantian morality and, therefore, it is typical in the contemporary followers of Kantian moral theory that they disregard the social ties and connections already in the starting point and they regard them only as incidental circumstances.

Kant rejected all habitual pursuit of morality contrary to Hegel. While the latter stressed the slow development of second nature (morality) by habit in the minds of individuals, Kant opined that if a habit determined an action (assuetudo), then there was no freedom and one could not talk about morality. [15] For Kant, morals were not only placed within the consciousness, but they could only be achieved with conscious decisions. Kant has taken over Rousseau's idea of freedom as self-determination, but while this idea was formulated by Rousseau in terms of self-determination of people as a political theory, Kant made it the basis of his moral theory.

Let us look at the analysis of Ernst Tugendhat, which stressed the difference between the theories of Kant and Hegel very sharply. Tugendhat claims that in Kantian theory this difference shows the waiver of the widespread moral standards of the community of actors, while in Hegel's theory it points to the emphasis on the binding moral standards of the community about the actions of community members. As a follower of Kantian theory, Tugendhat claims that Hegel's position resulted from a translation error that was caused by the two different views of the Greek word „ethos":

„Außerdem ist hier ein Übersetzungsirrtum unterlaufen. In der aristotelischen Ethik kommt nämlich nicht nur das Wort éthos (mit langem „é"), das Charaktereigenschaft bedeutete, sondern auch das Wort „ethos" (mit kurzem „e") vor, das Gewohnheit heißt, und es ist dieses zweite Wort, worauf die lateinische Übersetzung paßte. (…) Von daher ist die merkwürdige deutsche Übersetzung durch „Sitte" zu verstehen, wie wir sie z. B. in Kants Buchtitel „Metaphysik der Sitten" finden. Kant hat dabei überhaupt nicht an Sitten im gewöhnlichen Sinn (Brauchtum) gedacht, sondern verwendete das Wort einfach als Übersetzung für 'mores', das seinerseits nicht mehr in seinem ursprünglichen Sinn verstand wurde, sondern als angebliche Übersetzung eines griechischen Wortes. Erst Hegel macht sich dann den

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[14] Immanuel Kant, *Grunlegung zur Metaphysik der Sitten.* Herausgeben und erläutert J. H. von Kirkmann, (Berlin: Verlag von L. Heimann. [1797] 1870) p. 44.

[15] Kant, *Grunlegung zur Metaphysik der Sitten,* p. 152.

ursprünglichen Sinn des Wortes „Sitten" zunutze, um gegenüber der Kantischen Moral eine angeblich höhere Form von Moral, genannt Sittlichkeit, zu konstruieren, die dadurch charakterisiert sein sollte, daß sie im Brauchtum und im Hergebrachten fundiert sei" (Tugedhat 1994:34-35). [16]

It follows that the common standards of conventional morality cannot be accepted as true morality.

3.2. The way of narrowing morality to justice

The suppression of the public (common) morality of communities and their replacement by critical morality, which was (and is) the construction of moral philosophers, posed only a minor problem as long as these constructions preserved the multiplicity of moral values and virtues, and they only supplied a different emphasis for the hierarchy of values. The problem has become more serious ever since the 1970s, because the influential moral theories narrowed morality to a single moral value, and the demands of morality were fatally distorted in consequence. Instead of improving the reflexivity and the quality of moral judgments, critical morality exerts a tyranny over the people in the name of the supplementary morality of the moral philosophers. Let us take a closer look at this problem.

The narrowing of morality to justice by John Rawls received the greatest attention and he was widely supported by the dissemination of cultural and ideological sectors from the beginning of the 1970s. However, some critical reaction has also appeared, as, for instance, that of Caroll Gilligan, who pointed out that Justice Rawls's depiction of morality is only the morality of men. Gilligan consequently claimed that women have their own morality, which can be formulated as "care-ethics".[17] Michael Slote has recently drafted a similar version, which he named „benevolence morality". [18] But these versions of moral theories received no attention in the broader public policy discussions, and are mainly respected by the theorists of social work, and, when it comes to Gilligan's thoughts, by feminists. A more general criticism of the narrowing of morality can be found in the works of Michael Sandel and Charles Taylor, who obtained a great support in the scientific community. Sandel wrote:

"What is at stake in the debate between Rawlsisan liberalism and the view I advance in my work is (…) whether the principles of justice that govern the basic structure of society can be neutral with respect to the competing moral and religious convictions its citizens espouse. The fundamental question, in other words, is whether the right is prior to the good." [19]

In the work of Charles Taylor the critique of narrowing morality to justice by Rawls and his follower can be found in a more clear fashion:

"Much contemporary moral philosophy, particularly but not only in the English-speaking world, has given such a narrow focus to morality that some crucial connections I want to draw here are incomprehensible in its terms. This moral philosophy tended to focus on what it

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[16] Ernst Tugendhat,*Vorlesungen zur Ehtik*, (Frankfurt am Main: Suhrkamp, 1994) p.34-35.
[17] See: Caroll Gilligan, *In Different Voice*, (Harvard Univ. Press, 1982)
[18] See: Michael Slote, *Moral from Motives*, (Oxford Univ. Press, 2001)
[19] Michael Sandel, *Liberalism and the Limits of Justice.* Second Edition. (Cambridge University Press, [1982] 1998) p. X.

is right to do rather than on what it is good to be, defining the content of obligation rather than the nature of the good life; and it has no conceptual place left for a notion of the good as the object of our love or allegiance or as *Iris Murdoch* portrayed it in her work as the privileged focus of attention or will. This philosophy has accredited a cramped and truncated view of morality in a narrow sense, as well as of the whole range of issues involved in the attempt to live the best possible life." [20]

It is worth to cite of the analysis of Beauchamp and Childress too, albeit they did not have greater impact in the community of moral philosophers but their analyses are the closest to our analysis:

„Inductionism (the bottom-up approach) maintains that we must use existing social agreements and practices as a starting point from which to generalize to norms such as principles and rules, and inductivists emphasize the role of particular and contextual judgments as a part of our evaluating moral life. A society's moral views are not justified by an ahistorical examination of the logic of moral discourse or by some theory of rationality (Kantian, Rawlsian, Kohlbergean), but rather by an embedded moral tradition and a set of procedures that permit new developments […]. The institution of morality cannot be separated from a cultural matrix of beliefs that has grown up and been tested over time." [21]

Let us now first look at the narrowing of morality by John Rawls, and then by Jürgen Habermas, who completed Rawls's narrowing.

This narrowing was implicitly included in the Kantian ethics, which conceived of the morality of actions as the following of the only command (the categorical imperative). This has already been emphasized in connection with Nicolai Hartmann:

„Denn Kant ist es, der an Stelle der inhaltlichen Mannigfaltigkeit der Tugenden die Einheit eines Sittengesetzes, an Stelle der materialen Erfülltheit das formale Prinzip, an Stelle des objektiven Wesens sittlicher Ideen die subjektive Gesetzgebung gesetzt hat." [22]

But most moral theorists who followed the Kantian line, more or less preserved the multiplicity of moral virtues and values for a long time to come. The beginning of the narrowing may be located in John Rawls's „A Theory of Justice." He founded his theory on the studies of McDougall, James Mill, Freund, Piaget, and Lawrence Kohlberg in particular. As a starting point, he took the three-phase theory of Kohlberg (pre-conventional, conventional and post-conventional stages of morality, each with two sub-levels). As we have seen, Kohlberg designed the three phases of moral development on the basis of empirical investigation and although he knew even before the start of his empirical study that most people can be characterized by the second (conventional) stage, he assumed that there was a third phase where moral choices are made according to universal moral principles and human rights. Rawls somewhat transformed this last phase by limiting moral principles to the principles of justice:

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[20] Charles Taylor, *Sources of Self. The Making of the Modern Identity,* (Cambridge University Press, 1989) p. 3.
[21] T. L. Beauchamp, Tom L./F. James F. Childress, *Principles of Biomedical Ethics*, 4. Edition (Oxford Univ. Press. 1994) p. 18.
[22] Hartmann, *Ethik,* p. 137.

„In conjecturing how this morality of principles might come about (principles here meaning first principles such as those considered in the original position), we should note that morality of associations quite naturally lead up to a knowledge of the standards of justice." [23]

The empirical study of Kohlberg was important for Rawls, because he put great emphasis on the fact that a moral theory can be described as authentic only on an empirical basis. Subsequently, however, based on the results of Kohlberg's empirical studies, it turned out to be obvious that the third (post-conventional) phase of morality was designed only on the basis of Kohlberg's ideological faith. Indeed, not only are there merely 7 percent of people who could be classified at the lower level of the post-conventional morality, but the last (highest) stage remains empty:

„Kohlberg eliminated Stage 6 from his scoring system for lack of finding empirical cases of Stage 6 thinking. Furthermore, there is little evidence for Stage 5 scoring in Kohlberg's studies from around the world. Gibbs (1979)—a co-developer of the scoring system—even proposed that true Piagetian stages of moral judgment stop with Stage 4. The lack of empirical data for Stage 5 an 6—post-conventional thinking—is a serious problem for Kohlberg's enterprise, because he defined the stages from the perspective of the higher stages." [24]

It is important to emphasize that Rawls identified his highest stage of morality (the morality of principles) exactly with this non-existent last stage of Kohlberg. Despite this problem, Rawls later made no correction and his followers likewise disregarded this problem.

The prolongation of this narrowing can be observed in the moral theory of Jürgen Habermas, who, in his books in the 1980s, following the example of Rawls, differentiated between the lower stage of morality, namely „Sittlichkeit" (public morality), and the higher stage, which is universal morality:

„Aus der Perspektive eines Teilnehmers an moralischen Argumentationen stellt sich die auf Distanz gebrachte Lebenswelt, wo kulturelle Selbstvertsändlichkeiten moralischer, kognitiver und expressiver Herkunft miteinander verwoben sind, als Sphäre der Sittlichkeit dar. Dort sind die Pflichten derart mit konkreten Lebensgewohnheiten vernetzt, dass sie ihre Evidenz aus Hintergrundgewissheiten beziehen können. Fragen der Gerechtigkeit stellen sich dor nur innerhalb des Horizonts von *immer schon beantworteten Fragen* des guten Lebens. Unter dem unnachsichtig moralisierenden Blick des Diskursteilnehmers hat diese Totalitat ihre naturwüchsige Geltung eingebüsst, ist die normative Kraft des Faktischen erlahmt - können sich vertraute Institutionen in ebensoviele Fälle problematischer Gerechtigkeit verwandeln. Vor diesem Blick ist der überlieferte Bestand an Normen zerfallen, und zwar in das, was aus Prinzipien gerechtfertigt werden kann, und in das, was nur noch faktisch gilt. Die lebensweltliche Fusion von Gültigkeit und sozialer Geltung hat sich aufgelöst." [25]

In the final version of his moral theory („Faktizität und Geltung" in 1992) he radicalized his position and „Sittlichkeit" (public morality) appeared here only as an archaic substrate, which

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[23] John Rawls, John (1971): A Theory of Justice, (Oxford University Press, 1971) p. 414.

[24] J. Rest/D. Narvaez/M. J. Bebeau/S. J. Thoma eds., *Postconventional Moral Thinking: A Neo-Kohlbergian Approach*, p. 22.

[25] Jürgen Habermas, *Moralbewusstsein und kommunikatives Handeln,* (Frankfurt am Main: Suhrkamp, 1983) p. 117-118.

in the modern era has already fully and completely vanished. According to this final version, there are only two systems for the determination of actions, that of law and universal morality:

„Ich gehe davon aus, dass sich auf nachmetaphysischen Begründungsniveau rechtliche und moralische Regeln gleichzeitig aus traditioneller Sittlichkeit ausdifferenzierte und zwei verschiedene aber einander ergänzende Sorten von Handlugsnormen nebeneinander treten."[26]

He qualifies the rest of public morality in the modern era as mere conventions („von den blossen Konventionen entwerteten Sitten").[27] A second modification of his theory entailed that universal morality does not exist anymore as moral norms but as cultural knowledge only, and for the determination of actions there are only the norms of law. He speaks of morality as cultural knowledge („diese zum Wissen sublimiert Moral"); as morality transformed into cultural system („ins kulturelle System zurückgezogene Moral").[28] The end result of Habermas's moral theory is that there remains no system of moral standards on the community level (only the law) and on the level of the worldwide Republic of universal citizens there is only a cultural morality. As it has been seen earlier, this cultural morality is then narrowed to justice: „Die Vernunftmoral ist auf Fragen der Gerechtigkeit spezialisiert und betrachtet grundsätzlich alles im scharfen, aber engen Lichtkegel der Universalisierbarkeit." [29]

The narrowing of morality is finally completed here by the destruction of the whole of morality and it is the rule of law that solely remains, supported by state authority. It is not without irony that this theory translated into the political and ideological struggles is thought to be the conquest of the world's greatest freedom and tolerance by its followers. The truth is, however, that millions of people today, knowing nothing about Rawls and Habermas and their followers, socialize the multiplicity of moral values, norms and virtues, and are subsequently confronted on a daily basis with legal standards that are far from their moral standards and had been formed in accordance with the cultural moral theory of moral philosophers.

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[26] Jürgen Habermas, Faktizität und Geltung. Beiträge zur Diskurstheorie des Rechts und des demokratischen Rechtsstaats, (Frankfurt am Main: Suhrkamp, 1992) p. 135.

[27] Habermas, *Faktizität und Geltung. Beiträge zur Diskurstheorie des Rechts und des demokratischen Rechtsstaats*, p. 137.

[28] Habermas, *Faktizität und Geltung. Beiträge zur Diskurstheorie des Rechts und des demokratischen Rechtsstaats*, p. 1345.

[29] Habermas, *Faktizität und Geltung. Beiträge zur Diskurstheorie des Rechts und des demokratischen Rechtsstaats*, p. 137.