

## ARGONA WP 2

### Theoretical perspectives on participation and democracy

Intermediate Report – part 1

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## 0 Introduction

### 0.1 WP 2 rationale

Work Package 2 (WP 2) of the ARGONA project examines how democratic societies handle risk governance – i.e. the ensemble of rules, procedures and practices affecting how powers are exercised with respect to the control of potential adverse consequences to human health or the environment – with an emphasis on the possibilities and limits of public participation<sup>1</sup>. WP 2 seeks to offer the intellectual tools to **describe, explain, compare** and possibly **improve** the way risks are handled by democratic states<sup>2</sup>. It also sets out to show how some 'overarching' theories of risk governance need to be modified or supplemented. We will mainly draw upon two traditions in governance studies: one rooted in normative political philosophy (i.e. theories which seek to set out the conditions for 'good governance' mainly based on the ideal of 'deliberative democracy'), the other rooted in social-cybernetic systems theories (i.e. theories that draw upon a 'systems vocabulary' – autopoiesis, feedback loops, the system/environment duality, etc. – to analyse and discuss the form, functioning and overall character of social interactions). To a large extent, WP 2 builds on knowledge gained in the RISCUM - II project, and the conditions for the implementation of the RISCUM model are further investigated. However, the framework is broadened to include research about how the so-called 'transparency approach' and the 'deliberative approach' can be combined and how they can be linked to the functioning of the political system in which decisions (for example on the final disposal of nuclear waste) are ultimately taken. Indeed, it can be said that the RISCUM - II project pointed out the existence of a close relationship between transparency and public participation, but did not yet achieve enough conceptual clarity on the possible interplay between these overarching ideas. Hence, WP 2 will analyse the differences between the two approaches and clarify the links between them.

A vast range of political science writing is of general relevance to these themes, so perhaps our choice to focus on the above-mentioned theoretical perspectives needs to be justified a bit further. Our interest in deliberative democracy stems from a quite striking evolution. Members of academia, self-employed consultants, business managers and public servants alike appear to have accepted the idea that the answer to a number of wide-ranging contemporary problems (e.g. the 'great divide' between experts and laymen or political representatives and citizens; sweeping economic and technical changes with associated problems of social exclusion, etc.) lies in a greater degree of 'involvement' or 'participation' of the people most affected by these dynamics. In the context of radioactive waste management (RWM), there has been a noticeable change over the past decade in governance practice. Formerly the area was characterised by severe and sometimes violent polarisation between actors, typically in the context of top-down attempts to site a management facility in a (more or less) unwilling host community. By now, in many Western countries one can observe the emergence of innovative

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<sup>1</sup> We use the term 'governance' rather than 'government', since the former notion is not limited to the specific formal functions of government and the political system; but it also includes the informal organisation and regulation of collective affairs that is often taken for granted in society. 'Governance' therefore recognises the strong influence both formal and informal networks have on forging shared beliefs, allocating rights and obligations among parties, legitimating initiatives taken by policy and promulgating collective interests.

<sup>2</sup> Most examples of risk governance practices will be drawn from the field of radioactive waste management (RWM), although the conceptual thinking developed in WP 2 (and the overall ARGONA project) applies equally to other risk fields.

programs of co-operation among stakeholders, ranging from organised dialogue to formal partnerships<sup>3</sup>. Views on societal and technological solutions for managing radioactive waste are not necessarily shared among these stakeholders, technical proponents and public authorities<sup>4</sup>. However, the parties engaged in these innovative governance approaches increasingly share the idea that radioactive wastes do exist and need to be handled properly and that therefore RWM is a common concern. Increasingly, too, stakeholders share the objective of developing fair and equitable decision-making processes in RWM in order to reach sustainable options acceptable for both present and future generations. In sum, there seems to be a general interest in the gradual building and testing of more inclusive governance models, distributing power and problem framing across a broader base.

Such a description may at first glance convey a rather harmonious picture of public involvement in RWM, but – as with most things – the devil is usually in the details, and it is there that the picture becomes more complicated and ambiguous. The issue at hand is not just to promote participation as such – the notion of 'participation' is simply too amorphous (and even ambiguous) to be used as the sole normative reference (Rahnema 1992). The challenge lies in a meticulous consideration of the reasons why participation is thought to be desirable in a particular context, and a careful prioritisation and implementation of the interventions needed to promote a more participatory mode of decision making in the 'real world', which will always be marked by political power games and manoeuvres. In short, one needs to assess and assure the **quality** of ongoing interactions and communications. This in turn implies judging ongoing interactions from a certain 'vantage point'. In WP 2, we have opted to use Jürgen Habermas's theory of deliberative democracy, which provides a procedural normative ideal against which practical cases of participation can be compared. A few additional remarks seem to be in place here:

1. We are not suggesting that Habermas's view is the only possible way of conceptualising the problems and possibilities of deliberation. On the contrary: deliberation has a long history in political theory (e.g. Jean-Jacques Rousseau, John Stuart Mill, John Dewey), and contemporary deliberative democrats include amongst their ranks those in favour of a reinforcement of the 'traditional' mechanisms of representative democracy or those in support of newly emerging forms of 'governance' (to name but a few). And of course, Habermas is not without his critics or detractors. Nevertheless, besides the quite obvious practical impossibility of giving a complete survey of this large and diverse body of writing, Habermas's theory shows a number of attractive features. Firstly, contrary to most other political theorists, the scope of his theoretical insights is so extended that it is possible to

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<sup>3</sup> A number of European research initiatives reflect the increasing importance attributed to citizen or stakeholder involvement in RWM: the network COWAM (Communities and Waste Management) was the first European forum for dialogue among the full range of stakeholders, while the priority themes identified there have been researched in a participative manner by COWAM 2. A third and currently ongoing program, COWAM in Practice (CIP), will foster national working groups devoted to researching and proposing solutions for governance problems identified by the stakeholder participants. The EC-sponsored RISCOM II project has offered a model for understanding and achieving transparency (identified by the EU White Paper as one of the chief requirements for good governance). In this project there has been intense elaboration and input worldwide from social scientists on deliberative methods and theory, and experimentation with reframing through consultation and involvement, on local or national levels. Finally, the OECD/NEA-sponsored 'Forum for Stakeholder Confidence' (FSC) turned toward social sciences and local representatives to understand different perspectives. The gathering of the major national stakeholders under the same roof, the attending discussions, and the documentation of all discussions and points of view was considered to be of service to all stakeholders.

<sup>4</sup> Furthermore, disagreement subsists among various groups in society on whether to continue to exploit the nuclear power option; clearly, national energy scenarios and therefore the waste volumes to be generated in the future will have impact on the strategies and decisions considered now.

address almost all of the ramifications of the deliberative democracy discourse. Over the years, Habermas has continuously sought to apply his core ideas of 'communicative action' to *inter alia* fundamental questions of ethics, the functioning of law in modern societies, the development of autonomous selves, and questions of international politics. Secondly, and perhaps more to the point, Habermas's theory has been used actively in the field of participatory technology assessment (see e.g. Webler 1994); and it is of course one of the main theoretical references of the RISCUM model.

2. In particular, the range of Habermas's theoretical apparatus – extending from the 'macro'-level of explaining social order to the 'micro'-level of social interaction – is interesting because it promises to capture the crucial elements of (participation in) risk governance which indeed cover the range from 'micro' to 'macro'. We intentionally used the verb *to promise* in the last sentence: whether Habermas succeeds in truly capturing the dynamics of small group interaction<sup>5</sup>, or more generally, accurately describing what happens in speech acts, is a topic of much debate. Still, coming down from the level of 'macroscopic' political theory to Habermas's theory of social interaction is a move in the right direction.
3. We will reason 'from within' Habermas's theory – i.e. exposing key concepts and trying to show their implications for democracy, deliberation and participation. Other theoretical references will be used to introduce alternative points of view and/or criticise Habermas. In view of our subject matter, we will focus on those elements of the theory which are most relevant to risk governance. Therefore, we will for instance not (or only summarily) engage in the (extensive) philosophical debate on the value of Habermas's theory of communicative action as a theory that truly captures what people 'do' in communication.
4. Lastly, a discussion of deliberative democratic ideals also provides us with a convenient entry point to circumscribe our own ethical sensitivities. We share with Habermas and the authors of the RISCUM model a concern for a more emancipated citizenry – i.e. a citizenry capable of defending and upholding a well-articulated stance on controversial technological questions, instead of merely being a 'victim' of powerful political or economic interests. Therefore, we find deliberative democracy an interesting and promising idea. Its potential to alleviate at least some of the above-mentioned 'ills' of late-industrial societies therefore certainly merits attention. However, this position should not make us blind to some of the potential drawbacks of deliberative democracy and/or RISCUM. In particular, we will take issue with a certain tendency to control and manipulate deliberative arenas in the name of 'Reason' in order to realise an ideal conception of democratic decision making. We will demonstrate this tendency in a theoretical way both in some of Habermas's major works as well as in potential applications of the RISCUM model. Thus, one could say that we want to use 'Reason' (i.e. our exposé follows the logical order of a theoretical train of thought) to show the limits of 'Reason' (perhaps to end up with something we could call 'reason-with-a-small-r'). As such, we tend to align ourselves with those philosophical streams which advocate the priority of practice over theory, of sense-making over knowledge, or, in general, of life over all attempts to subjugate life to ideas<sup>6</sup>.

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<sup>5</sup> Indeed, it has often been pointed out that socio-psychological theories of small group interaction play little role in his work.

<sup>6</sup> For a compelling elaboration of this philosophical stance, see Burms en De Dijn (1990) (unfortunately only available in Dutch).

Our second theoretical reference – the social-cybernetic approach to the study of governance mechanisms – is perhaps even more in need of further justification. Part of the above-mentioned reasons for our choice to discuss Habermas's work applies equally to our choice for social-cybernetics (and more specifically, Stafford Beer's 'Viable System Model' or VSM): it is the other main theoretical reference of the RISCUM model, and again our choice in favour of this reference as a starting point for discussion does not mean that we fully endorse all the (theoretical as well as practical) consequences of this particular point of view, but rather that we want to reason 'from within' this theory in order to show its (practical) possibilities as well as its limitations. Of course, this 'stepping-stone' reasoning could apply equally to any other governance theory, and again – as was the case for the normative approach of 'deliberative democracy' – functional and/or analytic approaches to governance (i.e. approaches that mainly seek to describe, compare, and/or explain the way particular problems are governed, without offering an explicit account of the normative or ethical premises underlying the analysis) span an extremely wide range of alternatives. According to the political scientist Richard Rhodes, the concept of governance is used in at least six different strands of social science research, which each of course attribute other meanings to the concept: besides social-cybernetic systems, these are the 'minimal state', corporate governance, new public management, 'good governance', and self-organising networks (Rhodes 1996). Furthermore, in the introductory chapter of their book on "*The Government of Risk*", Hood *et al.* (2001, pp. 3-9) present an overview of theoretical approaches relevant more specifically to risk governance, which includes Ulrich Beck's theory of 'risk society' (which sees contemporary risks as the main driving force behind a new wave of modernisation – the hotly-debated 'second modernity'), Giandomenico Majone's theory of the rise of the 'regulatory state' (which describes the declining role of the state as a property owner or direct employer, combined with an advancement of the state's regulatory role), Michael Power's ideas of the 'audit society' (which describes the state's response to increasing risk and regulatory failures by greater investment in formal generalisable systems of control), and finally Mary Douglas and Aaron Wildavsky's 'cultural theory' (which sees risk definitions as political weapons used in a society poised between the individualist, egalitarian and hierarchical cultures). To this list we should further add the perspectives used in ARGONA WP 3, which draws upon Nicolas Rose and Peter Miller's analytical distinction between 'rationalities', 'programmes' and 'technologies' of (risk) regulation, supplemented by general insights taken from 'science & technology studies' (STS) (Bruno Latour, Michel Callon, etc.). So clearly, we need to explain our choice a little further. At this stage, our explanation will be limited to a number of 'postulates', but we hope the remainder of the report will further substantiate our position:

1. A particular theoretical line of approach should of course always be adapted to the particular research questions one is attempting to answer. Let us restate our research aims here: WP 2 seeks to offer the intellectual tools to **describe, explain, compare** and possibly **improve** the way risks are handled by democratic states. Accordingly, the main thrust of this report will be to demonstrate that the development of certain notion of 'systemicity' helps in achieving these aims. Let us stress the words *a certain notion of systemicity* in the previous sentence: 'systems', 'systems thinking', 'systemicity', etc. come in many different guises, and a lot of the analytical effort in the WP 2 report will go towards promoting an 'adequate' understanding of 'systemicity' – i.e. one not rigidly attached to the mathematical formalities ('axioms' etc.) and/or biological metaphors ('autopoiesis' etc.), while also not completely devoting the

notion of its meaning. In particular, we stress the following basic features of a system approach: a focus on the exploration of interactions and relationships between the different activities involved in governing risk (e.g. from the activities of policy makers to the actual implementation 'in the field' and *vice versa*); a focus on continuity – i.e. the active maintenance of a certain set of characteristics that lend a certain risk governance activity its identity; and the idea of 'recursiveness', which allows for the specification of risk governance activities at different levels (i.e. in some cases, it can be useful to think of RWM from an overall perspective, while in other cases it might be more instructive to focus on a specific subset of RWM tasks – e.g. those dealing only with finding an adequate site for a low-level waste repository).

2. The main thrust of our argumentation in favour of a systems approach is based on the observation that the 'proliferation' of risk governance theories ('risk society', 'networks', 'complexity theory', etc.) cannot be explained by the scientific logic of looking for 'better explanations' but rather should be attributed to a conceited need for differentiation. In particular, we will show that by drawing upon the basic concepts related to 'systemicity' we are able to show strong 'family resemblances' between many of the theoretical perspectives on risk governance. This will allow us to bring together many of the most fruitful ideas already explored in 'other' literatures.
3. The previous remark is especially relevant for the interaction between WP 2 and WP 3. Indeed, the philosophical implications of analysing governance either from a Habermasian or a Foucauldian point of view are very profound and subject to continuing academic debate (the differences run very deep and relate to 'basic' philosophical ideas about history, the status of the subject, the nature of modernisation, etc.). One can of course not expect such profound differences to be solved within the ARGONA project. But the question of course is: should we? In other words, do all of the theoretical concepts and practical implications developed under a Foucauldian perspective lose their relevance once we look at the same 'reality' from a Habermasian point of view? Here, we will attempt to steer a middle course between a 'meta'-theoretical level of conceptualisation (dealing with characterisations of fundamental philosophical concepts such as citizenship, subjectivity, reflexivity, etc.) and a 'micro'-level of dealing only with single case studies or particular risks without any attempts at generalisation. On this point, it was agreed that – although empirical case-studies will not be part of WP 2 work – the WP 2 report will rely on inputs of the different partners to illustrate how some of the points raised in the theoretical part have been 'negotiated' in practical deliberative democratic 'arrangements' (e.g. in the form of text boxes illustrating theoretical points). 'Steering a middle course' of course does not imply avoiding conflicts at all cost; hence the report – while relying on Habermas as its main theoretical reference – will at least mention 'theoretical alternatives' whenever the need for clarification arises, and discuss the main differences between these alternatives (without entering too much into details).
4. In any case (and this remark serves to complement the previous ones), the framework offered in WP 2 is by no means intended to be comprehensive. There is quite simply no

single 'correct' way of conceiving of 'risk governance systems'. Such concepts carry with them many possible interpretations, and there certainly is no need to try to capture everything within one conceptual scheme. Different 'lenses' can provide different insights, and indeed it is one of the conceptual strengths of the ARGONA project to study risk governance from different angles: institutional geography and formal rules in different countries will be the subject of WP 1; WP 3 will study the subject from the point of view of political science / sociology; risk perception / risk communication insights will be applied in WP 4; and WP 5 looks at the risks of RWM from a risk assessor's point of view, seeking to offer a more optimal decision approach with regard to the inherent uncertainties. Our 'system vision' can perhaps best be defined as an angle of vision that cuts across and pulls together many of the more 'traditional' strands of research related to risk and its management in contemporary societies.

5. The notion of 'systemicity' we aim to promote allows for an 'elegant' linking with the (thoroughly modified) Habermasian framework. This 'linking' will be the main subject of Chapter 5 of the present report; for the time being, it suffices to say that we are looking for a system concept that complements Habermas's (quite coarse and rigid) distinction between 'administration' and 'markets' as governing systems for authoritatively allocating resources to the management of risk and exercising control and co-ordination. At issue here is also the potential pay-off of combining ethical/normative and functional/analytic approach – an issue which we will explore further in the next section.

## **0.2 *The potential added value of combining ethical/normative and functional/analytic approaches***

According to John Rawls, justice is the main virtue of social institutions, just like truth is the main virtue of systems of thought (Rawls 1999). For Rawls, the issue is very clear: social institutions – no matter how efficient or effective they might be in reaching their goals – should be reformed or even abolished if they turn out to be based on unjust premises. One need even not agree with Rawls's quite radical conclusion to concede that the empirical evidence that questions of justice are central to most of the (political) problems contemporary societies face – including the governance of risk – is simply overwhelming. By way of an illustration, let us briefly discuss the problems related to RWM. What makes this problem so difficult to handle is not so much the technical knowledge required to build and operate RWM facilities, but rather the complex ethical questions it raises – especially in the repository siting phase. Different actors in the debate tend to adhere to different conceptions of (environmental) fairness and justice. For instance, the general opinion among scientific experts (geologists, engineers, modellers, assessors, etc.) in the field is that by striving towards the best technical solution (from the point of view of objective safety and health-related criteria) and by trying to find the perfect site matching these criteria, people will be rationally convinced and will accept the solution proposed to them. Setting aside the fallacy of this reasoning from a purely strategic point of view, this 'expert logic' tends to be at odds with other legitimate perspectives. On the other hand, local candidate communities for hosting a radioactive waste repository will refer to a principle of autonomy and correspondingly expect to have a say in the final decision. Thus, according to the latter position,

'justice' means that local actors should have the opportunity to learn about the advantages and disadvantages of various RWM options and, having considered these, decide on acceptance or rejection of these options. Furthermore, there is the difficult question of relating the justification for building and operating a RWM facility to the justification of the activities generating radioactive waste (nuclear industry, hospitals, universities, research centres, etc.) in the first place. And – to make matters even worse – questions of intragenerational ethics (distribution of costs and benefits over current stakeholders) are compounded by questions of an intergenerational nature (distribution of 'costs' and 'benefits' over present and future generations).

But are we not venturing into dangerous territory here? If we propose to include criteria of justice in our overall assessment of the functioning of risk governance regimes (instead of reverting to the typical detached sociological attitude of analysing the justifications used by the 'actors themselves' as social or psychological 'facts' without pronouncing any value judgements), will we still be able to uphold our 'scientific neutrality'? Such questions are likely to arise in the reader's mind, so we should address them at the outset of this report. In the context of ARGONA WP 2, we want to discuss normative/ethical philosophical references (most notably Habermas) not as a 'stepping stone' for developing our own ethical/normative position on risk governance, but rather as a way of illuminating the concepts of justice at stake in risk governance as they are used 'in the field' with reference to the 'philosophical' concepts and distinctions. We do not claim that the 'philosophical' distinctions (e.g. between procedural and substantive conceptions of justice, between ethics and morality, etc.) are used as such by the 'actors themselves'. The relationship between the philosophical conceptions of justice and those of the actors 'in the field' should rather be understood by analogy with the relationship between the 'map' and the 'territory': armed with the concepts of the cartographer, the movements of the actors will be more easy to describe, even though they are not cartographers themselves (Jacquemain 2005). Hence, the inclusion of ethical/normative philosophical references in risk governance theory according to us constitutes a major 'added value'.

Besides this, we see a further four main advantages of combining an ethical/normative with a functional/analytic one. As explained above, our particular approach to risk governance is meant to be a 'middle way' approach – i.e. one designed to be of more practical use than the 'macro'-level generalisations such as 'risk society', while achieving a broader and more general perspective than most 'microscopic' perspectives (e.g. studies focusing on single risks or on isolated aspects of risk governance) tend to aspire to. Therefore, the first and perhaps most prosaic value of the perspective we propose here is simply that it offers a framework for comparing different risk governance cases (e.g. RWM practices in different countries) by systematically 'unpacking' the constituent parts of risk governance regimes. Secondly, we aim to bring out the relationships between the different parts of the risk governance system, from the overall (political) justification for a particular risk governance regime taken as a whole (as expressed for instance in mission statements or strategic goals) to the level of practical implementation. Indeed, the need for such a wide scope arises because the nominal 'implementers' of a particular risk governance policy might in fact be applying their own 'ethical benchmarks', which may in practice often be different from the 'official' versions. Thirdly, the WP 2 results are not only meant as a tool for analysis, but also as a tool for identifying relevant questions. Indeed, to the extent that WP 2 is able to bring out the variety of ways in which risks can be governed, the question of what accounts for that variance is inevitably raised (e.g. is it a question of different



'political cultures' in different countries, or is the variance explained by the actions of lobby groups, etc.). Fourthly, we believe our approach is policy relevant in a number of ways. By offering a tool to compare how different risks are regulated in different policy domains (or the same risks are regulated in different countries), one can highlight e.g. the consistency between different approaches, or look for creative and qualified applications of some elements of risk governance that appear to work well in one country/risk domain. Such issues are at the heart of the concern for 'better governance' in the European Union (EC 2001). Another possible 'added value' from a policy perspective is the adoption of a holistic approach – i.e. the WP 2 framework aims to track the activities related to governance of risk across the various institutional and organisational boundaries (e.g. including different levels of government, the actions of private and public groups, the role of 'mediators', etc.) – thereby drawing the attention towards the overlaps (or 'underlaps') among the activities of the various actors engaged in risk governance. Finally, we will focus especially on opportunities for citizen and/or stakeholder participation in risk governance. We should of course keep in mind that WP 2 primarily seeks to offer the necessary intellectual tools for stakeholders engaged in risk governance to better understand their role and potential impact. Therefore, the level of analysis will be adapted to the overarching goal of the ARGONA project of strengthening existing policy making structures by the application of novel approaches to participation and transparency in risk governance (and RWM in particular).

### **0.3 Structure of the report**

In view of the above-mentioned objectives, the WP 2 report will be divided in three parts. The first part discusses the theoretical cornerstones of the RISCUM framework – i.e. Habermas's theory of deliberative democracy (which in turn builds on his ideas about 'communicative action') (Chapter 1 and 2) and the social-cybernetic 'Viable System Model' (VSM) (Chapter 3 and 4). A theoretical analysis will be made of crucial concepts such as discourse, justification, systemicity (and the system/lifeworld distinction), etc. The approach taken for both of these theories is similar: first, we set out the basic concepts (Chapter 1 and 3), after which we offer a critical assessment (Chapter 2 and 4). This will be done by a selective confrontation of the two main theoretical references with theoretical 'alternatives' drawn from a wide range of epistemology, ethics and political theory. The theoretical analysis offered in part 1 will serve as a foundation with general relevance for WPs 3-5.

The second part of the report (Chapter 5 and 6) then turns towards the development of a framework for describing, comparing and understanding risk governance regimes, by drawing together the insights gained from the investigations in part 1. Starting from some of the main insights of the RISCUM - II project, part 2 will mainly discuss and refine central notions of the RISCUM framework such as the role of a 'guardian' and a 'stretcher' in risk governance, the different channels or 'arenas' for influencing risk governance regimes in 'real' political settings, and the fundamental components of regulatory control mechanisms. Here the analysis will take account of the results from WP 1 in terms of constraints as well as degrees of freedom for deliberation and transparency that may exist within the legal systems. The comparison between the RISCUM model and the other philosophies can be applied to the role of mediations in technology discussions and risk management.

While the first two parts of the report are concerned with conceptual analysis and diagnosis, we change our focus in the third and final part (Chapter 7 and 8) on more evaluative questions about what causes or could cause risk governance regimes to change 'for the better'. We will mainly reflect on how the perspective developed in WP 2 can be used to refine our understanding of risk governance, and how such increased understanding could be used in view of the quite obvious requests for 'better governance'. However, we will try to avoid falling back into generalisations such as advancing 'transparency' as a panacea to all problems of governance. Furthermore, the 'lessons learnt' from the more theoretical investigations will not be used to offer practical recommendations for radioactive waste governance in an abstract – i.e. context-free – sense. From our perspective it makes more sense to reflect on the meaning of some of the theoretical points raised in the analysis from the perspective of the political culture and institutional settings in different countries, and perhaps offer some contextual recommendations for the different countries represented in the ARGONA project.

# 1 Approaching the work of Jürgen Habermas

In this chapter we will briefly explain the basic concepts of Habermas's thinking, thereby focusing on his theoretical insights relating to governance and democracy (Habermas 1994). However, as Habermas's work consists of a tightly-knitted whole, it is necessary to first briefly review his basic ideas about 'communicative action' built into his social theory (Habermas 1981) and the 'ethics of discourse' (Habermas 1983, 1991).

## 1.1 *The 'basics': speech acts, discourse, communicative and instrumental rationality*

In order to better understand Habermas's ideas, it is important to first identify the basic problems in philosophy and sociology he has been trying to address and rectify throughout his entire work. In his "*Theory of Communicative Action*" (TCA, Vol. 2), he sets these out as follows:

1. to engage in the philosophical debate about the nature of 'rationality', in order to identify a philosophical position able to preserve what he believes to be the truth of both 'transcendentalism' (i.e. philosophical theories which try to find an absolute ground for 'Reason', independent of history or culture) and 'contextualism' (i.e. philosophical theories which deny the possibility of the foundationalist project), while at the same time avoiding what he believes to be the unacceptable and potentially dangerous implications of fully accepting either position (i.e. in the case of 'transcendentalism', the inability to accept the fallibility of human knowledge; in the case of 'contextualism', moral relativism and theoretical contradictions);
2. to offer both a descriptive-explanatory and a normative-critical theory – i.e. a theory that not only serves as a framework for the systematic integration of existing and possibly new empirical research in the social or human sciences; but also able to account for the 'pathologies' of Western societies in such a way as to suggest a renewal rather than an abandonment of the ideal of the Enlightenment;
3. to offer a theory which is self-referentially consistent – i.e. able to account for itself without contradiction (this goal interests us less in the context of ARGONA WP 2);
4. to offer a theory which is 'open', in the sense of being subject to falsification through further 'testing'.

Habermas aims to achieve this ambitious goals by rooting his theoretical insights in the study of (the structures of) language. According to Habermas, the way people use language (or, more technically, exchange *speech acts*) lies at the root of all forms of social co-operation. As a consequence, understanding an utterance equals understanding the use we make of this utterance in trying to achieve mutual agreement. Habermas is here in agreement with *speech act theory*: the meaning of a linguistic utterance is to be understood by studying how this utterance is *used* to produce a change – i.e. to induce an 'action' (hence his characterisation of utterances as *speech acts* instead of simply 'words' or 'sentences'). Furthermore, according to Habermas, built into language is the assumption that a speaker can defend his or her statements if needed. Each speech act raises certain validity claims, which are accessible in principle to the other partners engaging in communication. This amounts to an implicit

commitment between two persons talking with each other: i.e. we understand each other if we are convinced that the reasons given for a certain argument are 'acceptable' or 'valid'. In other words, every time we make an assertion we implicitly presuppose that the validity claim(s) raised by this assertion can be verified or redeemed to the satisfaction of all participants in the interaction. When engaging in linguistic interaction, speakers **have no choice** but to warrant the validity claims of their utterances with the unspoken promise of being able to offer convincing arguments to anyone who challenges the assertion. **Language is conceived as a universal medium for embodying reason.**

Thus, each speech act makes one or more validity claims – i.e. it refers to 'something' in the 'world-out-there' on which the other participants can form a judgement. Habermas identifies three such *worlds*, each of them laying down different rules for redeeming validity claims. To these three worlds correspond three types of *discourse* in which the different validity claims are discussed. In **theoretical discourse**, reference is made to an *objectified world* of either nature or society, thereby raising a *claim to truth* (e.g. 'the risk of pursuing activity x is  $10^{-6}$  additional deaths per year'). In **practical discourse** reference is made to the *social world* of appropriate forms of social interaction, thereby raising a claim to *normative justice* (e.g. 'activity x entails risks which are unacceptable for society'). In **therapeutic discourse** reference is made to the *subjective world* of the speaker's 'inner feelings', thereby raising a claim to *authenticity/truthfulness* (e.g. 'I personally believe that the risks of pursuing activity x are unacceptable'). A 'world' in Habermas's terminology thus refers to the set of validity claims which are taken for granted in a particular context of interaction and are kept out of the discussion – i.e. those validity claims which are not raised to the level of discourse. That is why Habermas also refers to these 'worlds' as the *formal-pragmatic presuppositions* of interaction. More generally, Habermas's theory of how language in everyday life is used to produce collective understandings and mutual agreement is called *universal pragmatics*: 'universal' because the theory explains only the basic (formal) structures of language use (instead of e.g. giving detailed accounts of particular contexts in which language is used), 'pragmatic' because the theory focuses on the use of language in interactions between language users.

Habermas's theory of language use (i.e. speech act theory) is inherently connected to his theory of rationality. In fact, he distinguishes between two forms of rationality: *communicative rationality* and *instrumental* (or *strategic*) *rationality*. Communicative rationality is achieved when people are willing to suspend practical actions (e.g. when an unexpected problem is encountered) to enter into a discourse with an attitude oriented toward reaching *mutual understanding*. This means that people must be committed to reflecting on their personal beliefs, valid social norms, preferences, and particular interests; they must be open to alternative definitions of reality, and they must listen to other people's argument with an open mind. Although Habermas sees communicative rationality as being threatened by actual contemporary societies (1.3), he nevertheless argues that the core of communicative rationality – what he calls the 'unconstrained, unifying, consensus-bringing force of speech' – is a central experience of human life. This communicative rationality is contrasted to strategic rationality. We do not always use language to come to an agreement; in fact, language is often used to bring about a certain action through e.g. deception or threats. In those cases, language is not used to discuss and deliberate, but to lay down orders or to manipulate. Nevertheless, Habermas argues that the communicative use of language is the more authentic of the two; strategic rationality in his theory has a derivative status. Building on the anthropological insights of George Herbert Mead,

Habermas argues that communicative rationality – i.e. aiming for mutual understanding in order to construct a consensual social reality – is an aspect of our species' evolution, rooted in a biological predisposition and now solidified in the very structure of speech. In other words, our natural capacity for language contains the normative force of communicative rationality, which is to communicate with the intention of reaching agreement and understanding **exclusively** via the force of the better argument.

## 1.2 *The ethics of discourse and the ideal speech situation*

Habermas's elaboration of 'discourse ethics' – the meta-level complement in philosophical ethics to the more sociologically-oriented TCA – is to be found in his books "*Moral Consciousness and Communicative Action*" (Habermas 1983) and "*Justification and Application – Remarks on Discourse Ethics*" (Habermas 1991). These works return to the presuppositions of rational communication and appeal to them as normative standards for guiding our practical discourse (i.e. referring to the social world of appropriate forms of social interaction – cf. 1.1). Only through appeals to these normative standards can the norms and values by which we guide our actions be considered valid. According to Habermas, valid norms must be the subject of rational discourse; furthermore, a social norm can be considered to be valid if and only if such discourse leads to an agreement amongst all those affected by the norm in question. Habermas calls this the *principle of discourse ethics* or (D) (Habermas 1991, p. 12):

...Only those norms can claim to be valid that meet with the approval of all affected in their capacity as participants in a practical discourse...<sup>7</sup>

Because (D) only indicates that norms **must** be the subject of rational consent, but does not explain **how** this consent can be reached in a practical discourse, (D) needs to be operationalised further. This is where the so-called *universalisation principle* or (U) steps in, which stipulates a requirement of *universality* guaranteeing the *rightness* of the norm in question (Habermas 1983, p. 75):

...All affected by the norm can accept the consequences and side effects its general observance can be anticipated to have for the satisfaction of everyone's interests (and these consequences are preferred to those of known alternative possibilities for regulation)...

(D) is thus more 'abstract' than (U): (D) is supposed to be a generic principle underlying both morality (governed by (U)) and law (governed by the 'principle of democracy' – cf. 1.4), without (D) itself being a moral or legal principle. (D) only implies a notion of impartiality (i.e. a norm can only be valid if it is based on equal respect for everyone and equal consideration for the interests of all), which is a **necessary** but not a **sufficient** condition of morality (both just and unjust laws can be administered impartially).

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<sup>7</sup> We should add here that in later works (most notably in "*Between Facts and Norms*"), the discourse principle (D) is changed somewhat to account for the further differentiation of types of discourse he introduces there. (D) then reads: "...Action norms are valid if and only if all possibly affected people could assent to them as participants in **rational** discourses..."

Moreover, neither of the two principles (D) or (U) actually generates norms: discourse ethics should rather be seen as a 'testing procedure' for the validity of proposed norms, the need for which always arises in a particular context. Practical discourses are always related to the concrete point of departure of a disturbed normative agreement. This disturbance determines the topics that are up for discussion. Habermas sees two cases when moral questions could be raised: when the norms or values that used to help to provide an answer in certain situations are themselves in doubt (and structures, institutions or organisations that base themselves upon these norms and values can hence also be called into question), or when new information indicates that our actions affect the interests of others. According to Habermas, there are three ways of resolving the conflict through communicative action, each of them using a particular type of discourse with a particular end point: i) the *pragmatic discourse* terminating in a recommendation concerning a suitable program of action; ii) the *ethical(-existential or -political) discourse* terminating in advice concerning the correct conduct of life and the realisation of a personal life project; and iii) the *moral(-practical) discourse* terminating in an agreement concerning the just resolution of the conflict in the realm of norm-regulated action. Pragmatic discourse ultimately derives its validity from the empirical knowledge on which it rests, and therefore can only resolve the conflict if all those affected can agree that a technical solution effectively eliminates the problem. Ethical discourse does not strive for a universal solution to the conflict: what's 'good' or 'laudable' for a particular person, group or community does not necessarily have to be shared by another person, group or community. However, this does not imply that a rational debate about ethical(-existential or -political) questions is not possible: if for instance we cannot find any reasons to doubt the claim that something is 'good' for a particular person, then we have no reasons to object to this particular person trying to realise that particular 'good' in his or her life. In that sense, ethical discourses also strive for universality. The difference with moral(-practical) discourse is that the latter type of discourse strives for universality in a **double sense**: *everybody* has to agree that moral norms are applicable to *everybody*. According to that logic, moral norms take precedence over ethical norms, precisely because the former norms make possible 'living-together-in-diversity'. Ethical norms can be acceptable only if they do not violate (U).

Habermas furthermore tries to show that the discourse ethic (which guides our deliberations over moral-practical norms) is universally valid – i.e. for all cultures and for all times. Again (as in TCA), he tries to achieve this through a transcendental-pragmatic reconstruction of the basic presuppositions we are **forced** to make when entering into rational argumentation about moral norms. This reconstruction proceeds in two phases. First, Habermas reconstructs the presuppositions of discourse in general. These turn out to be (Habermas 1983, pp. 97-107): i) no party affected by what is being discussed should be excluded from the discourse (i.e. the *requirement of inclusivity*); ii) all participants should have equal possibilities to present and criticise validity claims in the process of discourse (i.e. the *requirement of autonomy*); iii) all participants must be willing and able to empathise with each other's validity claims (i.e. the *requirement of ideal role taking*); iv) existing power differences between the participants must be neutralised such that these differences have no effect on the creation of consensus (i.e. the *requirement of power neutrality*); and v) all participants must openly explain their goals and intentions and in this connection desist from strategic action (i.e. the *requirement of transparency*). Taken together, these requirements form the famous *ideal speech situation* (ISS). Next, Habermas shows that by entering into general discourse (and thus of necessity accepting the

ISS), participants already have accepted (U)<sup>8</sup>. At this stage, we should also point out the similarities between practical and theoretical discourses in the Habermasian sense. Indeed, both refer to an exterior 'world' independent of what people think or say, making possible the 'testing' of a validity claim. Indeed, Habermas supports an intersubjective notion of science as the product of social inquiry: one grounded in a pragmatic-transcendental notion of truth as warranted assertability and ethically guaranteed by the emancipatory potential of the ISS (Langlois 2003). The main difference between both types of discourse lies in the reasons why we would suspend everyday action and resort to argumentation: in the case of theoretical discourse, the reason will be a certain 'recalcitrance' we experience when trying to intervene efficiently in the objective world; whereas in the case of practical discourse, there is no equivalent to an 'objective world', only the counterfactual guarantees of an ideally justified acceptance (counterfactual, precisely because the ISS can never be realised in reality). We will return to the issue of the similarities and differences between the different types of discourse in Chapter 2.

Habermas's definitions of discourse ethics, communicative rationality and the procedural requirements of the ISS make it very clear that we are talking about a *procedural* conception of ethics. Discourse ethics does not provide any substantial orientations. To sum up, Habermas is a **universalistic moralist** as concerns **process** – i.e. the rules for correct process are 'always already' given in advance – but a **situationist** as regards **content** – what is right and true in a given situation can be determined solely by the participants in an interaction. We should already point out here that the discourse ethic and the ISS represent some of the most contested aspects of Habermas's theory. In Chapter 2 we will also take issue with Habermas on principal grounds. Let us just for the time being clearly state that our criticism does not repeat the tedious old argument that Habermas 'does not sufficiently take into account the omnipresence of power in social interactions' (see e.g. – amongst many others – Flyvbjerg 1998). Discourses may be expressed in terms of an ideal, but Habermas is fully aware that real discourses are subject to limitations. Rather, we will take issue with Habermas's assertion that institutional measures are needed to sufficiently neutralise these limitations and other unavoidable internal or external interferences so that the idealised conditions (which are, it should be recalled, 'always already' presupposed by the participants in argumentation) can at least be 'adequately approximated'. *Contra* Habermas, we will argue that this is no adequate representation of what people actually *do* in argumentation, and moreover that people *should* not accept the imposition of ideal rules of discussion (cf. 2.3).

### 1.3 Habermas's theory of society

At the core of Habermas's critical theory of society lies the insight that contemporary (Western) societies are being torn by *internal* contradictions (Habermas is not interested in developing an 'external' moralistic utopia). This analysis builds on the core concepts and insights as explained in 1.1. It is Habermas's contention that most contemporary Western societies promote a distorted understanding of rationality that is fixed on the cognitive-instrumental (strategic) type of rationality.

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<sup>8</sup> The requirements of inclusivity and autonomy imply that only those norms which take into account all interests on an equal basis will be acceptable to all. The requirements of power neutrality, transparency and ideal role taking ensure that the discussion will result in a rational consensus based exclusively on the force of the better argument, and not coercion.

Therefore, to that extent those societies are particularistic – they have realised rational progress only in a certain sense, and have overlooked the possibilities offered by communicative rationality. To that extent also the organisation of our present society can be said to be in contradiction with the normative ideals of living together.

Central to Habermas's analysis of society is the distinction between '*system*' and '*lifeworld*'. The '*lifeworld*' is to be understood as the ensemble of 'resources' for processes of reaching agreement – i.e. facts, social norms, and personal interest or needs which are taken for granted in our daily interactions (i.e. not questioned unless the need for doing so arises). Habermas compares the lifeworld to our bodies: we can touch or see certain parts of our body, but we can never grasp the entire meaning of our body 'out-there-in-the-world' e.g. by looking at it from outside of ourselves. Likewise, the lifeworld can never be transcended or grasped in its totality. Furthermore, the lifeworld is a dynamic given: it is constantly 'reproduced' through communicative processes of reaching agreement – new pieces of knowledge replace outdated ones, new norms replace those that are invalidated, etc. A characteristic of modern societies is that the lifeworld has become *rationalised* to a great extent. It is structurally differentiated into three different components (resonating with the three different validity claims inherent in language use): *culture*, *society*, and *personality*. Furthermore, modern societies have developed different specialised institutions (or 'expert cultures') for dealing with the validity claims raised in relation to each of these structural components: these are respectively *science*, *law/ethics*, and *art (criticism)*.

Taken by itself, the notion of the lifeworld is, according to Habermas, insufficient to develop an adequate understanding of the functioning of modern societies. Reaching mutual agreement is a very cumbersome process for guiding action; therefore, in the course of history, certain 'shortcuts' have developed in the interest of rendering collective action more efficient. Therefore, people have taken recourse to steering action through *steering media*. 'Money' is the first obvious example: the invention of money makes it possible to coordinate actions of a great number of people without having to convince each one of them individually of the need for a certain course of action. Money is, according to Habermas, 'ideologically neutral'. 'Power' is the other steering medium in Habermas's theory. Around both of these steering media, an entire 'system' is built: the *market* (in the case of money) and the *state* (in the case of power). In these systems, interactions between people are guided by strategic considerations only (i.e. the validity of these actions can only be judged from a cognitive-instrumental point of view). However, society conceived as a 'system' entails more than just an ensemble of people acting strategically: systems obey their own laws, which even transcend the strategic intentions of the people who are part of the system. We will discuss the notion of 'systemicity' in more detail in Chapter 4. For the time being, it suffices to say that, according to Habermas, systems constantly try to reproduce themselves, and they do so by either altering or restructuring their internal components or trying to influence 'the environment' which envelops them (and on which they depend for their survival). In Habermas's theory, the lifeworld constitutes the 'environment' for the market and the state, and as a consequence these systems constantly try to impose their imperatives also on the processes taking place in the lifeworld. This is Habermas's famous *colonisation* these: i.e. system imperatives try to assimilate lifeworld processes of reaching understanding and agreement in ways advantageous to their further survival without this being noticed by the participants in these processes. Habermas's criticism of contemporary societies is therefore not that the lifeworld has become more



rationalised, or even that more and more actions are coordinated by steering media (rather than language), but rather that the market and state systems have penetrated into domains of life which *ought to be* regulated by lifeworld interactions, hence threatening the very basis of symbolic reproduction of society (and of the moral allegiance of citizens to their society). An allegiance on which systems in the end also depend – e.g. the functioning of the market is dependent on lifeworld institutions such as private law, the cultural embedding of money in our daily interactions, etc. Hence, the *paradox of modern societies*: the explosive development of systems (and in late-capitalistic societies the market in particular) tends to undermine the basic conditions guaranteeing the survival of these systems in the first place.

It needs to be said however that the system/lifeworld distinction is introduced on sometimes rather ambiguous grounds. In earlier works, the distinction is introduced on cognitive grounds: if we are to gain an adequate *understanding* of modern society, an exclusive reliance on 'objective' scientific methodologies (i.e. using methodologies which do not engage in a rational discussion with the empirical 'subjects' of the research, e.g. psychometric surveys in the case of risk governance) misses the normative content of modernity. Later on, the difference rather seems to turn on political-normative conditions: what *ought* to be the case (i.e. a greater emphasis on collective action being steered through the processes of reaching agreement in the lifeworld) takes precedence over what, as a matter of fact, might *be* the case (i.e. the colonisation of the lifeworld by the systems of money and/or political power).

## **1.4 Habermas's theory of law, democracy and politics**

### **1.4.1 The primacy of the law**

The core idea of Habermas's theory of law, democracy and politics – i.e. that in a democratic society political decisions should be reached through a process of deliberation among free and equal citizens – is certainly not new. What needs scrutiny though is the reason for this renewed interest in deliberation (in particular in the context of risk governance), as well as the specific modalities of the Habermasian model. The reason for the renewed interest can perhaps be found in a certain disaffection with the current democratic institutions and the 'crisis of legitimacy' affecting Western democracies (we believe this 'crisis of legitimacy' also affects at least certain (aspects of) modern risk governance mechanisms). While very few dare to openly challenge the liberal democratic model, nevertheless one could say that there is a rather widespread cynicism about politics and politicians (and perhaps also the associated 'expert advisors') and that this has a potentially corrosive effect on popular adhesion to democratic values. Habermas contends that this has to do with the widespread belief that – given that it is self-interest which motivates individuals to act – it should be interests and preferences that constitute the lines over which political parties and interest groups should be organised and provide the matter over which strictly aggregative procedures such as bargaining and voting should take place. As a consequence, the argument goes, democratic politics was separated from its normative dimension and is now more envisaged from a purely instrumental standpoint. Habermas's cure: to offer a conception of democracy that recovers this moral dimension, without however relinquishing the defence of liberal institutions. In "*Between Facts and Norms*", Habermas's aim is therefore twofold: i) to provide a solid

basis of allegiance to liberal democracy by reconciling the idea of democratic sovereignty (i.e. 'the will of the people') with the defence of liberal institutions (i.e. freedom of thought and conscience, certain basic rights of the person and of property, and the rule of law); and ii) to recover the moral dimension of liberal democracy. Furthermore, Habermas is not interested in projecting a utopian democratic ideal; he explicitly wants to take into account the complexity inherent in present-day functionally-differentiated and pluralist societies.

The crucial move in Habermas's thinking about democracy is that it is possible, thanks to adequate procedures of deliberation, to reach forms of agreement that would satisfy both communicative rationality (cf. 1.1) and democratic legitimacy (i.e. the principle of popular sovereignty: democratic laws should obey the 'will of the people'). He does this by re-interpreting popular sovereignty in intersubjective terms and to redefine it as 'communicatively generated power'. In more technical terms (Habermas 1996, p. 29):

...The 'self' of the self-organising legal community disappears in the subjectless forms of communication that regulates the flow of deliberations in such a way that their fallible results enjoy the presumption of rationality...

The word 'legal community' is crucial in the above quotation. Indeed, Habermas's view of democracy and the democratic process is directly linked to judicial institutionalisation. He conceives of democratic procedures as the legal institutionalisation of those forms of communication necessary for rational political will formation. Paralleling his earlier theoretical undertakings (e.g. in TCA), Habermas sets out to reconstruct the internal formal-pragmatic presuppositions of the process of democratic lawmaking. In other words: which system of rights **must** citizens uphold (in a formal-pragmatic sense) in order to regulate social life in a legitimate way? First, Habermas argues that complex societies such as ours simply need a system of law for the purpose of social integration. In that regard, he sees the law as a necessary supplement to moral discourse. This is because in complex societies it is simply impossible to search for moral solutions (through moral/practical discourse governed by (U) and (D) – cf. 1.2) each and every time we are faced with multiple alternatives for undertaking action. Habermas contends that our capacities for moral judgement and action are *cognitively underdetermined* (i.e. we are cognitively unable to look at moral problems from all possible angles as required by (U)), *motivationally uncertain* (i.e. morality requires that we often act against our direct interests), and *limited in terms of accountability* (i.e. most of the truly moral problems of our time can only be tackled by collective organisational efforts far surpassing the capacities of individuals). Hence, the need for entrusting a (big) part of social integration to the system of law.

Contrary to morality, the system of law obeys not only cognitive rules, but also rules of (efficient or effective) action – i.e. laws can be enforced if the need for doing so arises. Another difference between moral and legal norms is that moral norms can only be the result of a moral (practical) discourse; whereas legal norms can result from either moral, ethical(-existential or -political) or pragmatic discourses (cf. 1.2), but also from conflicts between interest groups about distributive problems that can only be resolved by bargaining or compromise. However, Habermas remains adamant in upholding the primacy of the discourse principle (D): the differentiation within the field of issues that require political decisions negates neither the importance of moral considerations nor the

practicality of rational debate as the very form of political communication. For instance, even negotiations following the 'compromise model' must obey the discourse principle in the sense that all those affected by the compromise must have had a fair chance for influencing its results. Even though the parties involved in a compromise situation do not agree for the *same reasons*, it must be presumed that they nonetheless *all* agree to the outcomes (if not, the compromise cannot be called 'democratic'). The discourse principle still functions as the ultimate touchstone for the rationality of the norms guiding our actions – even those of a political nature. A final difference between legal and moral norms is that the validity of legal norms is limited to the specific legal community constituted by the system of law (hence a particular system of law will also reflect the historical or cultural particularities of this community); whereas moral norms are universally valid. Valid moral norms are considered to be **just** or **right**; whereas valid legal norms are considered to be **legitimate**. Or, to put it in other terms, while moral norms are ideally based on a **rationally motivated consensus**, legal norms only need to be based on a **rationally motivated agreement**.

Summing up, the system of law acts as a **mediator** between the lifeworld and the systems of market and state. It creates both a separation (e.g. contract and property laws have secured the autonomy of economic transactions from lifeworld interactions) and a bridge (e.g. certain laws restrict the action radius of the economic or political system in order to protect the symbolic integration function of the lifeworld) between both spheres. Hence also the dualistic character of laws: they are both **facts of social life** (i.e. the system of law describes which norms are factually binding) and, at the same time, require **legitimation** (i.e. a system of law must enjoy the presumption of normative acceptability in the legal community falling under its jurisdiction). Stressing both aspects of law (*legality* and *legitimacy*) implies that a democratic state not only is responsible for upholding the 'rule of law' (e.g. through the threat of sanctions), but also must create the institutional conditions ensuring that laws are created in a legitimate way. Those institutional conditions are embodied in the principles of popular sovereignty and human rights, which according to Habermas are 'co-original': on the one hand, the intuitive idea of self-government – in order to be consistent – has to uphold the idea of basic rights of communication and participation (e.g. the right to take part in free elections, freedom of association, freedom of speech, etc.); on the other hand, the idea of political or public autonomy implies certain basic rights such as the right to liberty, physical integrity, property etc.

#### 1.4.2 Deliberative democracy 'in practice'

The normative core of Habermas's conception of democracy – though internally complex – still refers to the highly idealised set of generalisations he developed earlier (under the ISS): *only those laws can claim to be legitimate that could meet with the assent of all citizens in a discursive law-making process that has been legally organised* (Habermas calls this the 'democracy principle'). Of course, Habermas (and his followers) do not deny there are obstacles on the way to the realisation of 'true' democracy, but those obstacles are conceived as *empirical* ones. They are considered to be due to the fact that it is unlikely, given the practical limitations of social life, that we will ever be able to completely leave aside all our particular interests and motivations in order to coincide with our 'universal', 'rational', 'democratic' etc. self. The basic problem Habermas has to address is of course that in modern democracies decisions about laws – whether taken by a legislature or through popular

referenda – almost never enjoy the universal consensus or direct participation projected by the above ideals. Citizens simply cannot literally come together to deliberate 'as a whole' in any forum or particular body. Discourse on matters of public interest is dispersed across a variety of fora, including (but not limited to) face-to-face interactions, dissemination of information or arguments through the public media, meetings in voluntary associations, the network of government agencies, departments, institutions, etc. Therefore, any plausible concept of deliberation must somehow do justice to this dispersed reality of real public discourse. In practice, this means that a deliberative democratic view must hold three terms together in a certain tension. Firstly, it must link deliberation and decision making with the 'public sphere' (i.e. an arena in which private people come together as 'a public')<sup>9</sup>. The sheer complexity of modern societies could tempt one to relegate deliberation only to political representatives, but it would be difficult to call such an account 'democratic'. Secondly, complexity should not be underestimated. If one locates deliberation primarily in the public sphere, one does not sufficiently take into account the institutional requirement for such deliberation to issue in effective decisions. Thirdly, one should not focus too much on the exigencies of bureaucratic control, thereby undermining the principle of popular sovereignty (Rehg and Bohman 2002, p. 37).

To solve this optimisation problem with three variables (i.e. finding a maximum of democratic self-governance, deliberation and effectiveness in political decision making), Habermas proposes a '**two-track**' model of democratic decision making. According to this model, institutionalised decision-making procedures must be both i) open to inputs from an informal, vibrant 'public sphere' and ii) appropriately structured to support the rationality of the relevant types of discourse and to ensure effective implementation. At its core, the 'two-track' model Habermas proposes can be resumed as follows: democratic procedures should allow a broadly based, subjectless public communication (arising in the 'public sphere') to be institutionally channelled towards specific decisions backed by effective power. Thus, Habermas does not locate political reason in a 'general will' (however it is revealed, e.g. in opinion polls or in the decisions of representative bodies), but in the *discursive structures* that link the public sphere with the political administrative system (passing through parliament which provides an institutional 'focus' for the decentred communications in the public sphere). The basic idea is to foster processes of communication and to design institutional procedures that at least make it more likely that political decisions will be based on reasons that would counterfactually correspond to those arising from an ISS-type of discourse. This has implications for both the (informal) public sphere and the (formal) structures of political decision-making.

Let us start with the public sphere. To function properly for democracy, a public sphere must, according to Habermas, not only detect and identify problems but also *convincingly and influentially* thematise them, furnish them with possible solutions, and *dramatise* them in such a way that they are taken up and dealt with by the parliamentary complex (Habermas 1996, pp. 359-366). This description presents four requirements for a democratic public sphere:

1. The public sphere must be receptive to broadly relevant problems as they are **perceived by citizens in their everyday life**;

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<sup>9</sup> The notion of 'a public' or 'publicity' perhaps needs some further clarification. Publicity (*Öffentlichkeit*) combines two meanings: i) something that is well-known; and ii) something that is accessible (open) to the public. A 'public sphere' can be understood as a domain of social life where 'publicity' reigns – i.e. where 'a public' can form an opinion (i.e. the 'public opinion') on matters of common concern.

2. In order to be receptive, the public sphere must be **rooted in a robust civil society** and an open, pluralist culture. Indeed, the public sphere is structurally different from other action coordinating mechanisms such as the market or administrative rule precisely because it is rooted in the lifeworld through the associational networks of 'civil society'<sup>10</sup>, which is described by Habermas as an 'intermediary structure' between the political system on the one hand, and the private sectors of the lifeworld and the market on the other;
3. The various informal publics generated by the different associations making up civil society must be at least partly open to one another, so that an exchange of arguments and viewpoints can occur in the public sphere. In fact, this condition shows that, for Habermas, a robust civil society by itself is no guarantee for deliberative democracy without a **unifying overarching public sphere** permitting the exchange and 'testing' of arguments;
4. Finally, the public sphere must be relatively free of serious distortions and blockages in communication. This means for instance that it must be possible for the public sphere to **mobilise itself** in critical moments and place issues on the political agenda. This also means that the mass media should not be controlled, restricted or distorted by powerful social interests.

Hence, a 'vibrant' public sphere must take the lead in rendering deliberation inclusive. The task of formal legislative bodies is then to focus this deliberation for the purpose of decision making. In effect, the inclusive participation of *citizens* in the public sphere is thereby translated into the inclusion of *arguments* in parliament and/or other deliberative bodies. This is further elaborated by Habermas into four conditions which roughly parallel those of a vibrant public sphere:

1. Legislative bodies must be **open** to more widespread public discourses;
2. The composition of representatives in such bodies should provide for the 'broadest possible' spectrum of perspectives to be anticipated from the **inclusion of worldviews of marginal groups**;
3. There must be a **real exchange of arguments** among legislators, so that the weaker arguments are screened out and the better ones can survive and sway the majority;
4. Finally, it is important to design **procedural mechanisms** that compensate for the potentially distorting effects of self-interest and power (i.e. guarding against exaggerated intrusions of the systems of money and power into the legislative deliberations).

It is also helpful to further elucidate Habermas's 'two-track' model by showing how he deals with the *plurality of procedural roles* (Rehg and Bohman 2002, pp. 37-40). The plurality of procedural roles involves a 'division of labour' across levels of deliberation and decision making. Through the discourse principle, Habermas strongly defends the idea that all members of a democratic society should take part in discourse, but this does not imply that they should all contribute in the same way. Exactly how the different roles are spelled out depends on how a particular political system is structured. In general terms, Habermas introduces a distinction between a '**centre**' and a '**periphery**'. The 'centre' is made up of the formal mechanisms of a democratic forming of opinion and decision (e.g. parliament, elections on a regular basis, competition between political parties), the diverse state

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<sup>10</sup> An exact characterisation of 'civil society' is hard to find, but most commentators on the subject agree that it has an institutional core constituted by voluntary associations, ranging from e.g. churches, cultural associations, and sport clubs to independent media, groups of 'concerned citizens', NGO's, universities, grass-roots activities, or even occupational associations, political parties and labour unions.

institutions (e.g. government, administration, etc.) and the judicial power. Habermas also calls this the *strong public sphere*, because institutions such as parliaments can reach binding decisions and are organised to do so. Between the centre and the periphery lie the organisations of the 'semi-public' sector – i.e. organisations which have been assigned a certain amount of autonomy to perform certain regulatory or administrative tasks for the state. Habermas calls this the **'internal periphery'**. In the **'external periphery'** Habermas locates both **'clients'** and **'suppliers'**. 'Suppliers' are those associations or groups which have become specialised in opinion formation (e.g. bringing new problems to the fore, articulating interests and positions, making political demands, exerting influence on the legislator or executive), which he also calls the *weak public sphere* because their deliberative practices consist exclusively in opinion formation and exerting influence and do not include decision making. 'Clients' are output-oriented networks made up of government institutions on the one hand, and private organisations, associations, interest groups etc. on the other. Such networks take up tasks of coordinating action (it is here we should locate various governance mechanisms). In order to function well, the weak public sphere should be institutionally separated (e.g. through a system of political and civil rights) from collective powers of action located in the 'official' political structures, while also serving as a source of direction and legitimacy. Habermas is not arguing that discourse should be the sole organising principle of institutions (a crucial point to make for our present topic). Institutions cannot conduct all of their affairs through discourse, any more than individuals would wish to devote their lives solely to discourse. Rather, we generally tend to avoid discourse because it is so cumbersome and consumes much time and effort (cf. 1.1). Moreover, genuine discourse is made impossible by the division of labour necessary for any collective action. Hence, Habermas's argument is not that democratic institutions should conduct their affairs through discourse all the time (he allows for a certain amount of 'routine actions') but rather that they should be structured so that discourse can emerge (in the public sphere) when ruptures of shared understanding require some kind of resolution.

To sum up, the success of this decentred and legally-secured account of democracy crucially depends on the proper institutionalisation of the conditions and procedures of free communication in both the political system (the *strong public sphere*) and the more informally organised and highly pluralised civil society (the *weak public sphere*). These procedures and conditions are also understood by Habermas as providing the basis for the development of social solidarity among 'strangers' in the public spheres of civil society and the deliberative arenas of the state. He argues that the institutional 'infrastructure' of civil society must be complemented by a 'liberal political culture' and the "...supportive spirit of consonant background of legally non-coercible motives and attitudes of citizenry oriented towards the common good..." (Habermas 1996, p. 499). Elsewhere, he describes his approach as 'constitutional patriotism'. Again, on this point Habermas's language is very abstract, indicating that he does not want to indicate in a substantial way the kind of civic virtues he has in mind. As a minimum, in a democratic society following Habermas's model, citizenship would be defined in terms of taking part in the public debate. Civic participation is *discursive* participation. Furthermore, discursive participation also implies *detached* participation, insofar as communicative rationality requires ideal role taking, power neutrality, etc. (cf. 1.2).

## 1.5 Summary and conclusions

Habermas's work should at its most basic level be read as an attempt to establish a universal and rational constitution of (political) philosophy, (social) science, forms of social organisation and ultimately also society. Furthermore, Habermas believes that without such a constitution, the result would be contextualism, relativism or even worse, nihilism. The goal of Habermas's theory of communicative action is precisely to locate this rational constitution in the pragmatic presuppositions of intersubjective processes of reaching understanding. These presuppositions are universal because they are unavoidable: just by entering into a communicative interaction with the aim of reaching understanding, we raise certain validity claims which – in order to be understandable – have to be redeemable by referring to a 'world' we have in common. Habermas's ideas about communicative power and the (albeit counterfactual) possibility of universal consensus – though adapted to the 'reality' of complex and pluralised societies – also lie at the base of his thinking about democratic politics. The fundamentals of his theoretical framework (speech act theory, communicative action, the nature of rationality, etc.) are (sometimes in a slightly adapted form) brought to bear also on the self-understanding of democratic constitutional states. Habermas defends a procedural account of what he calls 'deliberative' (or discursive) democracy, with three outstanding features. Firstly, political power can only be legitimate if it is exercised through the **medium of the law**, which itself has to function as a 'bridge' between the weak public sphere and the centralised political system (hence connecting the market and state systems to lifeworld experiences). Secondly, politically rational decisions allow for a **much wider range of discourses than morally rational decisions**. Political decisions can be the result of ethical(-existential or -political) or pragmatic discourse as well as bargaining or compromise. Therefore, it is not the case that according to Habermas legitimate political decisions are aimed exclusively at obtaining a universal consensus (as dictated by the universality principle (U)). Thirdly, Habermas does not 'do away' with power/relationships based on power. While according to the 'two-track' model of deliberative democracy it is true that power has to be transformed/translated (from 'influence'/'social power' to 'communicative power' to 'administrative power'), this does not mean that the exercise of power is illegitimate *per se*. Rather, legitimate power can be exercised by the legislator, the executive or the judicial system insofar as it is justified through the use of **public reason**.

## 2 Habermas – A critical assessment

### 2.1 Introduction

Whereas Chapter 1 was mainly written as a 'crash course' introduction to Habermas's thinking, Chapter 2 is written as a critical appropriation and reflection on the applicability of the theory of Habermas mainly in the context of governance of radioactive waste. The legitimacy of this approach is to be found in a twofold way in the fundamental character of Habermas' understanding of critical theory as such. Firstly, in developing his (early) theories, he saw the ideas emerging out of American pragmatism and German hermeneutics as of key importance for the construction and legitimacy of any kind of critical theory. These philosophies share the assumption that (Finlayson 2005, p. 18):

...philosophy must find its home in, and preserve its link with, everyday life. Philosophical theories have to pay their way by making a difference to the lives and the experiences of real people in the actual world...

Secondly, most early critical theorists (including the early Habermas and his predecessors Max Horkheimer and Theodor Adorno) claimed that the historical process of Enlightenment privileged natural scientific and technologically-exploitable forms of knowledge over and above all other forms of rationality. We could add to this that – despite all philosophical or sociological reflections on Enlightenment, modernity and postmodernity of the last few decades – even today this is still the predominant state of affairs in many domains of technological decision making (including risk governance). Today, natural sciences are to a large extent still back-to-back with economic sciences to draw upon any kind of means-ends reasoning in the interest (and in turn, justification) of 'social progress' that – in this context – is essentially a synonym of 'economic growth'. Finally, although the following arguments are formulated as a critique on the theory of Habermas in the context of its applicability in radioactive waste governance, the critique as such is of course not the ultimate goal. On the contrary: the reason why we chose to devote so much of our attention to Habermas's theory in the context of ARGONA WP 2 is that his main ideas on communicative action and discourse ethics and his views on morality in a political context can easily be translated and understood as a fundamental critique on the way society is (or is not) involved in radioactive waste governance and (nuclear) energy policy today. This should be kept in the back of the mind when reading the following argumentations.

Overall, our argumentation unfolds as follows. In the first few sections, we will take issue mainly with Habermas's epistemological orientations towards ethics, morality and science (2.2 and 2.3). One can certainly say that discourse ethics is the 'normative heart' of Habermas's philosophy. In this, the introduction of the notion of '*intersubjectivity*' as the cornerstone of his (normative) theory (and practice) was an important move away from the traditional **monological** theory of morality and ethics, as developed by Immanuel Kant and later introduced in contemporary political theory by John Rawls. Indeed, Habermas's **dialogical** theory of ethics and his ultimate focus on the possibility of consensus predicated on 'mutual recognition' – i.e. the realisation of a complete symmetry between participants in a communicative interaction (based on the requirement of *ideal role taking* in the ISS – cf. 1.2) – laid



out the groundwork for an argumentation that aimed to prove that fair and transparent negotiation among concerned humans in the interest of 'helping to transform society for the better' was indeed possible. Hence, the notions of intersubjectivity and symmetrical interaction lie in a very fundamental way at the heart of the Habermasian project, in the sense that they permeate all theoretical extensions and applications elaborated after the publication of the TCA. Nevertheless, it is precisely this crucial assumption we want to question in section 2.2 of the present chapter, where we will argue that interactions between people are fundamentally marked by asymmetries, which cannot be simply 'reasoned away'. Next, we take issue with Habermas's projection of an ideal speech situation as the ethico-political horizon towards which actors have to move when confronted with 'problems' (of a theoretical or practical nature) in their everyday interactions (2.3). Finally, we also argue that Habermas's understanding of 'problematic situations' which interrupt the course of 'routine action' is overly focuses on the cognitive aspect of such situations, thereby ignoring the primacy of human interests in 'making sense' of situations. Instead of Habermas's overly cognitive view on the road towards co-operation and/or consensus, which necessarily has to pass the test of justification under the conditions laid out in the ISS, we propose a different view that places the notions of 'commitment' and 'appraisal' at the centre of attention. Appraisal and commitment are (analytically) separate, but interacting, paths to co-operation. Appraisal comprises essentially 'cognitive' or 'epistemic' (e.g. rule-based, analytic) processes – 'ways of understanding', for instance the attributes of a governance regime. In appraisal processes, knowledge is constructed, imbued with meaning and possibly subjected to 'testing procedures' (in this sense, we are still in agreement with Habermas that both scientific knowledge and moral norms can be subjected to cognitive testing under 'appraisal' procedures). Commitments, by contrast, involve more 'ontological' 'ways of being' or 'relating', for instance to a governance regime. The essential notion of 'commitment' is already introduced in section 2.2, where we furthermore uphold the primacy (and control) of commitment over processes of appraisal – i.e. setting into motion or restoring appraisal processes first requires the establishment of (more or less) shared commitments. Starting from section 2.4, we develop these ideas in different directions. In sections 2.4 and 2.5 we mainly look at the context of relationships between persons or between a person and person-like entities (to which values can be attributed) such as e.g. RW governance institutions. There, we introduce the notion of 'perplexity' as a crucial concept to understand in a fundamental sense what sets into motion processes of a possible major change of commitment of a person towards other persons or person-like entities. In section 2.6, we then give a more rounded account of what exactly is meant by the concepts of 'commitment' and 'appraisal' as introduced in the context of risk governance.

## **2.2 Recognising asymmetries of interaction**

It is important to understand why (the counterfactual possibility of) symmetrical interaction occupies such a central place in the Habermasian project. What is at stake here for Habermas is nothing less than the heritage of modernity itself. In fact, Habermas attempts to revive the old Kantian project of showing that Reason is capable of both telling us what *ought* to be done – without having recourse to any considerations other than those that follow from the structure of Reason itself – while it also has the *power to execute* the actions that are proposed precisely because they comply with Reason. It is by bringing these two principles together that Kant could reach the conclusion that the law is obligatory

*because* it is universal – and this *because* should be read in both directions: not only "if norm x is a universally obligatory norm, then you must perform the action y corresponding to norm x", but also "if you must accomplish the action y, then the maxim of your will is a universally obligatory norm" (Scruton 1982). Of course, Kant was only able to arrive at this result by making abstraction of any form of particularism attached to individuals (e.g. individual desires, interests, etc.) which he dismissed as irrelevant elements of the 'phenomenal world'. Habermas, by giving an 'intersubjective spin' to the Kantian project, does not abide by this abstraction and contends that moral norms can only come into being through a 'testing procedure' involving particular norms and values brought to the table by unique, contextually-situated individuals. By positing the discourse principle (D) and the universalisation principle (U), Habermas frees the Kantian 'categorical imperative' from its bondage to monological reason and readapts it to function as a rule of argumentation in practical discourse.

The basic problem – i.e. that of coupling 'Reason' to 'motivation' or 'will' – remains the same however. Sure enough, the Habermasian reformulation of the categorical imperative is able to uphold the notion of 'Reason'. Habermas maintains that conducting practical discourse following (U) is sufficient for making rationally convincing (i.e. cognitive) normative solutions possible whenever a targeted practical problem is such that it qualifies as a problem of morality (i.e. the problem is such that it makes a difference to at least one person's interests and this difference is sufficient for this person to care about). 'Valid' norms are those that can count on the agreement of all those concerned. The procedure behind this reasoning necessarily presupposes that each participant in a practical discourse can freely occupy the position from which a prescription (with a claim to the status of 'validity') is addressed. In other words, a norm is 'valid' only if the addressees of a prescription could 'at the same time' regard themselves, without coercion, as its addressors. Which is equivalent to saying that a norm is valid if it can *convince* all those concerned on **reasonable grounds**. But of course, like Kant, Habermas also wants to make the reverse claim: if one is convinced by a (moral) prescription (with a claim to validity), then one should be committed to defending it, and the results of the defence should then be such that it satisfies the conditions for a valid norm (i.e. (D) and (U)). It is precisely this reverse step that Habermas, on account of his own reasoning, is simply unable to make.

Indeed, as Visker (1995) shows, Habermas is unable to understand why a moral law holds because he remains caught in the following dichotomy: either *convincing* (and hence reasonable) or *constraining* (and hence unreasonable); either '*Reason*' or (blind, illegitimate) '*violence*'. Habermas through deliberation systematically transforms the logic of an **obligation** or a **prescription** into the logic of a **description**: i.e. the prescriptive clause "it is an order that p" is transformed into the descriptive clause "someone has said that p must be done (by me)". Or, as Visker puts it, Habermas transforms the law into a commentary on the law. But if morality were only a cognitive resource – in the words of Habermas, a 'testing procedure' for correct judgement of the morally right and the morally wrong without strong motivational (passionate, emotional) links to conduct – then why care about morality at all? Does the concept of 'responsibility' still have any meaning if it consists in doing what 'Reason' dictates? What does it mean then that 'I' am responsible or feel obliged to do something if I simply carry out what everyone can agree to (Derrida 1999)? Is it not a sign of profound irresponsibility (or at the very least, a gigantic 'leap of faith') to abandon my sense of responsibility and commitment and set all of my hopes on the 'subjectless forms of communication that regulate the flow of deliberation in such a way that the results enjoy the presumption of rationality' (cf. 1.4)?

In fact, the notion of an 'obligation' or a 'prescription' cannot be understood without positing a fundamental asymmetry between the addressor and the addressee of the prescription. Such a prescription obligates whether or not the addressee is convinced of its correctness. We often feel obliged by 'something inside of us' to do something without really being able to explain or understand why. Discussing the full implications of this alternative point of view would take us to far away from our present topic of risk governance. Let us just point out what we believe to be the basic problem and even danger of the Habermasian point of view. In fact, Habermas assumes that the 'order of the body', of 'lived experience' (or whatever you want to call it) is equal to the order of language, or at least that language is potentially flexible enough to encompass that order. Habermas seems to assume that people are able to manage to break into the centre of their lived experience (i.e. to confront the 'Thing' that makes this or that experience 'mine') and moreover exercise argumentative control over it. In other words, Habermas recognises parts of the self that do not contribute to control only as prelinguistic 'disturbances' (Warren 1992, p. 232). The danger of this point of view is that it threatens to ignore the unspoken, producing as it were a 'tyranny of discourse'. In the end, Habermas maintains, **validity will rule over meaning**. Herein lies the fundamental difference of opinion between Habermas (and his followers) and a slew of other philosophers (generally – though often mistakenly – characterised as 'postmodernists') who maintain the primacy of processes of 'giving meaning' (e.g. looking for recognition, expressing oneself, being accepted in a group, etc.) over cognition. We will take sides with the latter group. The point is not a romantic one but rather a recognition that inner experience, though it might not be formulated as discourse, anchors part of the self that not only 'disturb' language but also account for happiness, uniqueness, a sense of fulfilment, etc. Furthermore, we maintain that recognising and understanding the importance of such processes of giving meaning is crucial to understanding the functioning of risk governance mechanisms, especially when such mechanisms extend to experiments in public participation. Indeed, in applying discourse ethics to the reality of the politician – stakeholder relation or the (scientific) expert – stakeholder relation (in the context of radioactive waste governance, or in any other risk governance context), the conception of intersubjective symmetry as a prerequisite for communicative action deserves special attention. One could question what 'symmetry' could mean at all in reality when arguing on the societal aspects of complex technological applications, and what conditions should be met to ensure this symmetry.

In order to give a more concrete example, one could wonder how symmetric 'recognition in interaction' can be between a government nuclear expert and a citizen from a local mountain village who is only able to express him or herself in the local dialect? We could of course state that it is a moral responsibility of both subjects to 'recognise this symmetry of recognition', but how can they be sure they both are able to translate and apply this moral stance into the preparation and the practice of their dialogue? And how could others test in practice that this symmetry is indeed ensured? In this, it might be worthwhile to look at what other 'postmodern' philosophers said about the subject in (their) critical theory. One of the Slovenian philosopher Slavoj Žižek's main contributions to critical theory is his detailed elaboration of the subject, especially in the context of his writings on democracy. According to Žižek, if you take away all of a person's distinctive characteristics, all particular needs, commitments, interests and beliefs, you are left with 'a subject'. The frame of this report does not allow going into a deeper critical comparative analysis of notions of the subject, but we preferred to highlight this specific view to introduce a new way of perceiving the concept of a 'mandate'. To

paraphrase Žižek: if you strip away all of a person's distinctive characteristics, all particular needs, commitments, interests and beliefs, you are left with 'a subject' *and his eventual mandate or role*. Habermas would suggest that the mandate is the subject's identification in (or recognition by) the system world. So apparently, the greatest challenge with putting discourse ethics for performative dialogue into practice (e.g. in the case of the sketched example) would be to recognise initial asymmetries of interaction, as it is essential to *recognise mandates*, but at the same time to learn to recognise '*symmetry of recognition*' by decoupling the mandate from the human. As a consequence, this would mean that the government nuclear expert, although having a mandatory responsibility, cannot claim 'authority' based on this mandate. As an even important consequence, it would uncover the responsibility of the citizen from that local mountain village, next to his rights to become involved in order for his concerns to be taken into account. These ideas on mandates/roles will be taken up again later in Chapter 5, where we will elaborate our view on the study of risk governance mechanisms.

### 2.3 On the ambiguity of the ideal speech situation

Of course, if we interrupt the direct link between prescription and description, do we not risk falling into the trap of relativism or even nihilism – a risk that precisely Habermas has been warning us of over and over again? If I can only recognise moral norms for what they are because I feel obliged to do so, then how can I ever know if this obligation is a *moral* one – i.e. a norm that is universalisable to others? How can I compare my obligation to yours if I cannot ultimately grasp the 'Thing' that obliges me in language or discourse? We will deal with these problems in the next section. For the moment, we want to point out that the Habermasian solution to the problem of universality – the ISS – is profoundly inadequate and even might turn out to be dangerous when applied in political contexts (cf. 2.3).

The basic importance of the ISS in the Habermasian system should be well understood. The ISS is introduced by Habermas first and foremost to posit the fundamental **fallibility** of both our factual understandings and the norms governing our actions, by submitting these to a counterfactual testing procedure which projects the moment of 'full rationality' into an undefined and ultimately unattainable future. Through the ISS, Habermas is able to connect (contextually-situated) everyday action with the (internal) possibility – inherent in the way we use language – to transcend every possible context and spatio-temporal limitation. What is at stake here is nothing less than a way out of the age-old debate between 'contextualists' and 'foundationalists'. It should come as no surprise then that the ISS has been the subject of a good deal of criticism coming from both camps. Indeed, a number of commentators have pointed out a fundamental ambiguity or even contradiction in the functioning of the ISS in Habermas's writings. This ambiguity can be stated in two ways (Langlois 2003, pp. 566-567):

1. the ISS is supposed to guarantee the rationality of a discourse, but the ISS itself **surpasses the order of discourse**. Indeed, the notion of an 'ideal consensus' necessarily contains the idea that no further arguments could come to disturb this consensus; hence, the ideal consensus no longer belongs to the discursive order. But then, how can we ever know that we are in a situation of ideal consensus? Or, on an even more fundamental note, can an ideal consensus still be expressed in language? Even if we submit (as Habermas does) that one should resist

the temptation to see in the ISS a possible (empirical) realisation of a 'way of life' (i.e. the realisation of a fully rational lifeworld), the *contradictio in terminis* still remains on the ideal level. In order to think the possibility of an ideal consensus (even only as a regulative idea), one has to be able to take on both and at the same time the *internal perspective* in order to judge the acceptance of the consensus for the participants in the discourse, as well as the *external perspective* of an 'omniscient being' that is capable of judging the 'ideal' or 'irrevocable' status of the consensus. To us this seems to be an impossible splits, even for the most nimble of mind gymnasts...

2. the ISS is a **useless conceptual device** for understanding what happens in argumentation or discourse. One has to choose between two options. The first one is that the ISS does have implications for actual discussions, in the sense that it provides procedural requirements (e.g. to open up the debate to a 'relevant' public) adapted to certain *contextual and spatio-temporal conditions*. In this case, there is no guarantee whatsoever that a possible consensus would be immunised against future revisions. The other is that the ISS bears *on all imaginable discourses*, both present and future. In that case, it cannot represent anything but an empty criterion for judging actual discussions.

According to us, the fundamental problem is that Habermas posits the ISS as a *positive requirement* for discourse (i.e. the conditions laid down in the ISS ideally **have to be** fulfilled in order to speak of a rationally justified agreement). According to Habermas, everyone entering into discourse makes the strong assumption that the deliberative process makes it at least 'more likely' that the outcome is one on which everyone would ultimately (given enough time) and ideally **converge**. But, in view of the above criticism, it is not at all clear that, in the process of exchanging arguments with the aim of sorting out the 'good' ones, the rationality or justification of these arguments must necessarily presuppose an order of ideal discourse, or even that people should adhere to such an order. Therefore, we propose a much 'weaker' reading of deliberation, one that could accept the conditions laid out in the ISS as *negative requirements*. The key to this 'weaker' reading is this: it is enough for people engaging in deliberation to assume that – given a commonsense understanding of deliberation which implies a search for 'good' arguments – outcomes and decisions allow an *ongoing co-operation with others* holding different commitments and opinions that is at least **not unreasonable**. This view does not require that arguments are cut loose from their contexts and submitted to the judgement of some transcendental tribunal – something which seems to be implied by the notion of a 'guardian of the process' in the RISCUM model (cf. Chapter 5). Procedures for judging the validity of arguments only exist as a complex ensemble of practices. Those practices in turn constitute specific 'forms of life', which make possible the allegiance or commitment to the procedure (again, the importance of 'making sense' surfaces). It is because they are inscribed in shared forms of life that procedures can be accepted and followed. This already indicates that a strict separation between 'procedural' and 'substantial' (or between 'moral' and 'ethical'), a separation that is central to the Habermasian undertaking, simply cannot be maintained. The further political implications of this point of view will be discussed in Chapter 6.

## 2.4 *Particularism and universalism*

*Contra* Habermas, we believe that the 'solution' to relativism – i.e. a dialogue of the deaf, all speaking from a particular position which cannot be communicated to others – does not lie in pushing the dialogue towards ever higher levels of abstraction. Perhaps a bit paradoxically, the undeniable presence of the particular (which, it should be recalled, from the point of view of another person can always appear arbitrary or even ridiculous) in the things we value most and are most committed to can be a seed for the establishment a new kind of universal order. It is precisely through this experience of particularity, of strangeness in ourselves that we can become sensitive to the experience of strangeness in general. In the words of Burms and De Dijn (1990, p. 91, our translation):

...The things to which one is attached most, can be considered from an objective point of view as futile and hence vulnerable. Realising that the things we value most are in fact vulnerable and arbitrary, we become aware of the inevitable arbitrariness of every curtailment of our moral concerns. The corresponding attitude is one of a tension between two elements: the acceptance of particularistic restrictions as inevitable and, at the same time, the realisation of the arbitrary and non-rational character of these restrictions. This means that the deepest form of loyalty is experienced as an attachment that, from a strictly rational point of view, has to appear as a coincidence. But it is precisely because one realises the arbitrary extension of one's loyalty, that one can perhaps become sensitive to a particular kind of respect for the beings that appear near the border of this loyalty: the stranger, the guest, the handicapped person, the recently deceased,... Through the acceptance of the strangeness or arbitrariness in ourselves one becomes responsive in principle to the acceptance of strangeness in general...

This process of 'becoming sensitive' is by no means a given, and therefore cannot simply be 'managed'. Since commitments are often based on, or lead to, categorical judgements (e.g. 'this behaviour is acceptable/unacceptable'), major changes in commitment may require re-categorisation, a re-drawing of community boundaries, which might be a traumatic process altogether. Therefore, it is always possible or even likely that actors turn away from the possibility of 'particularism-leading-to-universalism' and instead invoke this particularism precisely as a reason for not engaging in any kind of moral relationship at all. To give a more concrete example in the case of future generations of what Burms and De Dijn (1990, p. 88) call a 'badly understood particularism' (as opposed to the 'particularism-leading-to-universalism' so vigorously defended in the above citation), we might refer to a case where an argument of particularity has been used to deny any moral obligations towards (far-off) future generations. The argument goes as follows: in order for moral relations to exist between people, they have to be part of a moral community, implying a certain consensus on fundamental ethical values. But there is no guarantee whatsoever that (far-off) future generations will share these fundamental values. Taking decisions now in the name of future generations thus resembles a lottery game, since we can never be sure that future generations will agree on our judgment. Hence, we should not be too concerned with future generations and reserve our moral concerns to the present (or nearby) one(s). The argument is bad because it raises the 'strangeness' of future generations to the point that we no longer recognise them as human; this is something different altogether than saying that we have no strict criteria to demarcate them as human, no more perhaps than we have for ourselves, and that this is precisely the reason why we can form a 'moral community' with them...

To sum up, deep commitments (to people, objects, situations, roles, etc.) can perhaps only be 'changed' or possibly 'shared' with others in moments of profound 'perplexity' about the particular nature of a commitment. The very nature of perplexity makes this possibility impossible to 'manage' or foresee in any way. This is not comparable to an attitude of methodological scepticism, but rather it designates the possible starting point for a collective process of building lasting associations – one in which nobody can claim a representation of the totality of the interaction or a 'mastery' of the foundations on which it is taking place (cf. 2.7).

## 2.5 On perplexity

Habermas's theory of communicative action founds on the claim that 'understanding a speech act' essentially equals 'knowing under what conditions it can be considered acceptable' (see chapter 1). In this, it is known that 'acceptable' refers to the motivation of the person to make a certain statement rather than to the truth claim within the statement as such. Indeed, according to Habermas, a speech act is connected to a set of legitimacy claims (truth of the statement as such, legitimacy of the speaker in relation to the hearer, 'sincerity' of the speech act) that, each in its turn, needs to be 'tested against doubt' in interaction. A legitimacy claim considered as self-evident for both the speaker and the hearer (eventually based on argumentation by the speaker) is said 'to belong to the lifeworld'

In his theory of communicative action, Habermas did not put much special attention to the specificity of scientific knowledge as subject of speech acts. Modernity was said to have brought a massive growth in 'knowledge', especially in the natural sciences, and this led him to the separating out of three distinct spheres of value (or lifeworlds), being the scientific-technical, moral-legal and aesthetic-expressive respectively. As the natural sciences replaced religion as the source of (or reference for) 'epistemic authority', the 'scientific-technical' value sphere could now be connected to the concept of truth, and according to Habermas, the three kinds of 'validity' could be identified as truth, rightness and truthfulness. In their turn, these value spheres correlate one to one with the three spheres of discourse: theoretical, moral and aesthetic.

In Habermas' theory, as well as in critical reflection on it, especially the scientific-technical (lifeworld) – truth (validity) – theoretical (discourse) connection has been somewhat underexposed, as well theoretically as in terms of its practicability. Obviously, the character of objectivity of this connection has been commented from out of various relativist and constructivist conceptions of truth and knowledge that appeared in the same late-modern era (\*\*\*referenties). In the frame of this text, we argue that these discussions get somewhat lost in circular reasoning because they mix different conceptions of 'what knowledge is' in the first place. Apparently, theories that consider knowledge to be 'a social construct' tend to inquire the authority of the 'knowledge disseminator' (e.g. the scientist, the expert, ...) rather than the 'objectivity' of the subject of his/her testimonies ('the expert's knowledge is relative because he/she is just a social actor as any other 'lay person)'). The underlying assumption of this kind of critical argumentations against the existence of objective knowledge, however, is that, in that case, knowledge as such is considered more as a *product* (that can exist in some abstract way independently of people), and not as 'something' that is generated through, and lives in, a process of

*interaction*<sup>11</sup>. Habermas overcame (or avoided?) this discussion by stating that the origin of any 'society' exists in the communicative act of two people talking to each other, and that knowledge is thus generated 'through interaction'. Relativists claim knowledge is relative because the disseminator cannot be objective. Habermas (and others\*\*\*?) says that knowledge exists by the sake of interaction but acknowledges the existence of technical-scientific objective knowledge in the sense of 'facts'. Relativists consider 'the social construct' as a condition that 'undermines' the truthfulness of the expert's knowledge. Habermas, on the other hand, sees the expert's motivation as the extra information ('beyond the facts') we would need to acquire to be able to fully understand the claim (as understanding would enable the hearer to judge on the acceptability of the claim or speech act). Although, in this sense, relativists consider the expert as a passive (undergoing) actor while Habermas would speak more of a 'rational' actor (whether strategic or performative), the discussion apparently tends to circulate around the legitimacy of the actor in real (practical) deliberation situations, while it does not focus at all on the practicability of using technical-scientific knowledge in that very deliberation.

Instead of going into an investigation to find out whether Habermas' vision on the use of scientific-technical knowledge is relativist- or constructivist-proof, we prefer to move beyond this discussion by looking at what happens if scientific-technical knowledge (whether considered as objective facts or relative results of social construction) is brought into the deliberation arena. In fact, Habermas gave an opening to this kind of insight by stating that (as said in the beginning) 'understanding a speech act' essentially equals 'knowing under what conditions it can be considered acceptable'. If we would imagine a scientist 'in the arena'<sup>12</sup>, making a claim on the projected evolution of the technical and natural integrity of a radioactive waste disposal site, he/she may point at acquired insight into the phenomenology of the behaviour of materials under specific conditions and show a graph that would project possible radioactive releases from the site in function of time. Regardless of the fact the scientist would be aware of different visions on his/her truthfulness and of the way it would be judged by others, the scientist would have to admit that, in the arena, the argumentation would essentially rely on 'what he/she believes but cannot prove'. In other words: even in an ideal Habermasian performative deliberation situation, wherein the speaker could show or prove legitimacy through 'authenticity' and 'transparency', he/she would face a certain *perplexity* when it comes to use 'scientific-technical evidence' in the argumentation. The evidence may be phenomenological evidence, but not evidence of proof<sup>13</sup>. Even if the scientist would be able to show evidence of proof in a situation of deliberation, the result would still be that the audience is unable to fully grasp 'the conditions under which the speech act can be considered acceptable'. The scientist is forced to 'ask' a certain kind of *trust* while the audience will need to *believe* what the expert claims *in order to accept* the claim.

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<sup>11</sup> The fact that, 'in between interactions', knowledge is indeed 'condemned' to exist in the form of objects (printed or electronic texts) is irrelevant in this argumentation.

<sup>12</sup> The 'arena' can be understood in the broadest sense here, incorporating a setting for a classical hearing, a testimony in parliament and in front of a commission, but also in a press article, a scientific article or essay, or a discussion in an informal context.



Apparently, when using scientific-technical knowledge in deliberation, the question of validity of 'truth' cannot be solved within the value sphere of 'theory'. Besides the remark that this could lead to new ways of theorising epistemic authority and rationality in using scientific-technical knowledge, we state that it has serious implications for the way this kind of knowledge can be applied in both policy supportive research and in the deliberation arena as such (cf. chapter 6).

The idea of perplexity exists throughout philosophy since the ancient Greeks. As there are different interpretations of the word (idea, concept, etc.) possible, it is worthwhile to dwell a little more in detail on it in the frame of this text. Traditionally, philosophical perplexity ('being philosophically perplexed.') is about a state of being intricate, entangled, puzzled or complicated 'in face of complexity'. It should be clear here that, in introducing perplexity in the deliberation arena, we do not mean this 'disorienting feeling of cognitive helplessness, characteristic of philosophical perplexity' (Matthews 1999) but rather a state of perplexity 'the other way round': you enter the arena bringing along (your) insight and 'evidence' you apparently cannot express to the full extend 'in the present instance, at this moment' in the argumentation.

To make the setting complete, we argue also for the awareness and recognition of 'stakeholder perplexity'. If the scientist in a deliberation on a complex technological application such as radioactive waste governance has to rely to a certain extend to 'what he/she beliefs but cannot proof', the stakeholder or civil society representative has to argument about 'what he/she fears but cannot grasp'. Due to the uncertainties with regard to the causality-risk relation and the complexity of distribution of benefits and burdens connected to 'risky' practices such as radioactive waste disposal, the citizen or 'lay person' will enter the arena with a concern that is not easily translatable into a rationale on acceptance (or rejection) of that 'perceived risk'. Indeed, the citizen has to bring a rationalist argumentation to the arena that would be based on a careful inclusive synthesis of his/her relevant values and norms (or those of the group he/she represents) and with a rational argumentation with regard to the legitimacy of the way he/she 'represents' society. With Habermas, it would appear impossible to *understand* the citizens speech act, as the citizen is not able to explain why the speech act would be *acceptable*. While usually the citizen is unable to go into a discussion on the scientific-technical issues that would allow to question the character of 'safety' of the disposal site ('truth'), a legitimacy claim referring to the normative or social world ('rightness') would essentially start from the (nowadays) unquestionable claim of 'the right to participate', but end up straying within the complex exercise of justification of the act of disposing radioactive waste as such. Last but not least, while the scientist can rely on a transparent rationale with regard to authority of *representation*, the citizen, as stakeholder, would have more difficulties to make a legitimacy claim with regard to the 'truthfulness' of the way he/she represents society.

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<sup>13</sup> A nuclear expert arguing on the benefits of using nuclear energy would rely on the well-known rational arguments with regard to the safety of the reactor, the insight into the future performance of a waste disposal site and the regulations that ensure the protection against low levels of radioactivity. Knowing that these arguments are based on the science of probabilistic safety assessment, performance assessment and radiobiology of stochastic effects, and thus on a 'probability', a 'prognosis' and a 'hypothesis' respectively, one can understand that it is impossible to deliver 'scientific proof' of benefits and risks in a deliberation arena. The expert may point at the substantive scientific and practical experience acquired already in the field of reactor operation, but cannot do the same in relation to waste disposal. With regard to the risk of low level radiation, the stochasticity of the phenomenon does not allow to calculate potential cases of harm out of a certain risk estimate.

Apparently, even in an ideal Habermasian deliberative setting, with all requirements of discourse ethics fulfilled, it would not be possible to 'argue' on complex risk-inherent technological applications until all parties 'understand' each other (with the eventual consequence of one convincing the other). It is tempting to quote Wittgenstein (1969, p. 81) here:

...Where two principles really do meet which cannot be reconciled with one another, then each man declares the other a fool and a heretic. I said I would combat the other man, but wouldn't I give him reasons? Certainly; but how far do they go? **At the end of reason comes persuasion...**

Confronted with their specific perplexity in making their point while seeking to claim their 'truthfulness', the scientist will have to *ask for* and rely on a certain kind of 'trust' offered by the citizen, while the citizen will have to *ask for* and rely on a kind of 'compassion' from out of the scientists position. Given the fact that these soft attitudes or values are normally considered as based on ethical values rather than on morality, the question rises how they could be formalised as a 'procedural aspect' (let stand as a legal requirement) in a context of deliberation as such. This question will be taken up again in chapter 6.

## **2.6 Commitment and appraisal**

The reasoning developed in the above paragraphs, applied to our present concern of (RW) governance, can perhaps be summarised in the following way. We suggest that however governance is characterised, it necessarily involves complementary, intertwined and mutually co-constituting (but nonetheless analytically distinct) processes: 'appraisal' and 'commitment'. Appraisal comprises essentially 'cognitive' or 'epistemic' processes – 'ways of understanding' the socio-technical governance system. In appraisal processes, knowledge is constructed, imbued with meaning and possibly subjected to 'testing procedures' (in this sense, both scientific knowledge and moral norms can be subjected to cognitive testing). Commitments, by contrast, involve more 'ontological' 'ways of being' or 'relating' to the socio-technical governance system (Stirling 2006). Here real relationships are formed, tangible resources produced and deployed and concrete governance interventions undertaken. In terms of risk management, the aims of governance across these functions are essentially to make robust diagnoses and prognoses of the problems in question, develop shared prescriptions and marshal sufficient resources to make the appropriate corrective interventions. By highlighting this dual distinction between appraisal and commitment, we hope better to explicate what we hold to be an important contrast between a 'managerial' and a 'political' perspective on these various functions of socio-technical governance (cf. Chapter 6 for an in-depth discussion of the politics of deliberative democracy). This said, it may be useful to review in a little more detail some of the contrasting attributes of commitment and appraisal.

### *Commitments*

Social actors can be 'committed' to a socio-technical system in a number of overlapping and related senses. In the above sections we might perhaps have given the impression that 'commitments' are conceived of as abstract and disembodied. Nothing is further removed from the truth. Commitments,

in order to be durable, have to be 'actualised' in some form or another. Following Stirling (2006), we can distinguish three such forms. One form of commitment is rooted in **material interests**, in the sense that actors rely on the functioning of the system in order to satisfy some need, e.g. (a feeling of) security in the case of risk governance. A more direct and constitutive form of material commitment resides in the way that the functioning of the system itself requires the coordinated mobilisation of actors and resources. Obvious examples include capital finance, subsidies, operation of infrastructure, management of contracts, regulatory oversight and security, political support, knowledge production, etc. The way in which actors engage in the production and reproduction of these relationships and resources represents a distinct form of commitment to particular configurations of the socio-technical governance system in question. Obviously, this form of constitutive commitment relates closely to (but does not coincide with) the reciprocal benefits deriving from participation in the reproduction of the system, and which can be of different natures: psychological (e.g. recognition, personal satisfaction), economic (e.g. remuneration), social (e.g. status), etc. 'Clients' of a risk governance system could for instance derive benefits from the particular efficiency, convenience or style in which the system helps them meet their need for security (or other possible needs such as the need of being informed, involved, taken seriously, etc.), at the same time as furnishing a demand (and resources) for the reproduction of the system. Government actors might commit to the system because it facilitates further economic development, or fosters social cohesion, or contributes to policy goals or displays more specific and expedient political benefits.

Overlaying, facilitating and informing these kinds of material commitments are **discursive commitments**. These may arise simply as privately-entertained normative values concerning an existing system configuration founded on the material commitments reviewed above. Alternatively, such values may be more openly expressed, representing to wider discourses support for particular constituent socio-technical risk governance structures and practices. Again, these discursive commitments may be developed for varying substantive, normative or instrumental reasons. Whatever form they take, they play an important role in coordinating action amongst different governance actors. In this regard, it is desirable that discursive commitments display a degree of interpretive flexibility, such as to maximise the engagement, recruitment or assimilation of as wide a range of actors as possible. Discursive commitments have obvious epistemic qualities that shade into the social appraisal processes of governance, but which we nevertheless hold as analytically distinct. The crucial difference between discursive commitments and related aspects of appraisal, however, hinges on the distinctively 'ontological' character of commitments. For example, when a government minister articulates a range of specific merits and/or shortcomings displayed by a particular socio-technical configuration such as nuclear power, then the epistemic quality of this intervention renders it a discursive contribution to wider discourses of social appraisal. When the minister's intervention has the effect of asserting a position, by contrast (e.g. concerning the necessity or unique favourability of nuclear power), then the intervention has a more ontological form – as a tangible indication of positive intentions towards this configuration. The effect of this kind of discursive commitment, maybe then to prompt a cascade of co-ordinating alignments on the part of the commitments of other actors. It is in this way that appraisal and commitment are mutually co-constitutive – and may be present as aspects of the same intervention – but are nonetheless for our purposes analytically distinct.

Complicating this picture of material and discursive commitments are **institutional and structural** factors. These can be approached by distinguishing between the role of established commitments in system reproduction and new commitments to system change. Processes seeking to transform a risk governance system are structurally constrained by historically established commitments embodied in infrastructures, networks, institutions, practices and discourses. The formation of commitments for change must therefore work against these structures. For instance, new imperatives may be introduced by novel pieces of legislation or new actors may be enrolled through discursive commitments to risk governance (e.g. through experimentation with the new forms of participatory governance). A number of actors whose resources are relevant to the governance challenge will necessarily be committed to the reproduction of the risk governance system and enjoy advantages from that position. Examples in the case of RW governance include regulators, waste management organisations, risk assessors, etc. Some of the functions and resources that these actors bring to bear in the reproduction of system functions, precisely for this reason, will be essential in realising commitments for change. Some actors are more intensively involved in the reproduction of the governance system than others. As such they enjoy quite powerful positions, benefit strongly from the status quo, and occupy important gate-keeping positions. Established commitments are often reinforced (and entrenched) by past investments in supportive infrastructures (e.g. underground research laboratories) and institutions (e.g. risk regulations). Whilst these investments stabilise commitments to the existing socio-technical system, they also represent a form of structured power, which could form an obstacle in the formation of commitments to other possible risk governance configurations. Actors in structurally powerful socio-technical positions under the status quo can be well placed to exercise strong influence over attempts to change things. In a governance relationship no one organisation can easily command, although one organisation can dominate a particular process of exchange and clearly there will be structural biases against radical socio-technical change. The importance of counteracting such bias (that is, if change is considered to be necessary or desirable) by building up an arrangement that possesses sufficient legitimacy, authority and/or efficacy thus becomes clear.

### *Appraisal*

It is against this background that appraisal is described as the 'epistemic' corollary to the more 'ontological' form of commitments. In other words, it relates to 'ways of knowing' rather than 'ways of being' in the governance system. Accordingly, appraisal is about production of substantive understandings, learning and cultural meanings concerning the socio-technical system. In these broad terms, then, appraisal involves a very wide variety of discursive processes, institutional practices, disciplinary approaches and methodological tools. In addition to conventional distinctions between different styles of appraisal – such as expert-analytic versus participatory-deliberative – Stirling (2006) highlights two important but rather different cross-cutting distinctions, which will be taken up by us in Chapter 5 where we will propose a concrete 'tool' for the diagnosis of risk governance regimes. The first concerns the *breadth* of the inputs to appraisal: which may variously be 'broad' or 'narrow' in a number of different ways. The second concerns the way that the outputs of social appraisal serve to '*open up*' or '*close down*' the formation of discursive and material commitments in wider governance.

The breadth of the 'inputs' to appraisal can be understood according to many different dimensions. These may concern the kinds of issue that are taken into account in forming the salient bodies of

knowledge – extending, for instance, from technical and financial to environmental, social and ethical considerations. They may reflect the depth in which causal relationships are explored and represented (concerning successively less 'direct' or more 'complex' effects and implications). Likewise, appraisal may be relatively broad or narrow in terms of the treatment or acknowledgement of associated uncertainties and ambiguities. It may also vary in the breadth of the intervention options that are addressed (across alternative technologies, measures, policies, practices and institutional frameworks). Finally, the inputs to appraisal may be relatively 'broad' or 'narrow' depending on the range of contending social, institutional or disciplinary perspectives that are involved in producing and deliberating the knowledge, learning and meanings in question.

Irrespective of whether the inputs are 'broad' or 'narrow' in these terms, the outputs of appraisal may equally be variously 'open' or 'closed' in form. This concerns not the scope of the methods, practices, institutions or discourses involved in appraisal, but the manner in which the consequences are represented to – and reflected in – the formation of governance commitments. Does this take the form of 'closure' around the merits of particular technologies or interventions? Or does it rather comprise a more reflexive 'opening up' of understandings of the particular contingencies, contexts, conditions or perspectives under which different possible technologies or governance interventions might alternatively be favoured. This is not a necessary corollary of breadth in the inputs to appraisal. A broad-based appraisal process may yield normative grounds for the 'closing down' of commitments around a particular course of action. A relatively narrow technical expert appraisal, on the other hand, may (through relatively technical procedures like sensitivity analysis or minority opinions) serve to 'open up' wider discourse, by highlighting the validity of a variety of contending judgements or interpretations. In these terms, then, closing down in appraisal is about 'defining the right questions, finding the priority issues, identifying the salient knowledge, recruiting the appropriate protagonists, adopting the most effective methods, highlighting the most likely outcomes and so determining the 'best' options' (Stirling 2006, pp. 21-22). Opening-up, by contrast, reveals to wider governance discourses the open-endedness, contingency and capacities for social agency in technology choice. 'Instead of focusing on unitary prescriptive recommendations, appraisal poses alternative questions, focuses on neglected issues, includes marginalised perspectives, triangulates contending knowledge, tests sensitivities to different methods, considers ignored uncertainties, examines different possibilities and highlights new options' (Stirling 2006, p. 22). In particular, by highlighting the way in which the picture yielded in appraisal is contingent on, and conditioned by, prior perspectives – and thus commitments – of different actors, an 'opening up' mode represents a greater degree of reflexivity.

## ***2.7 On cognitive, motivational and organisational overburdening of society***

Whatever existing or new social theory is considered to describe society, one could say that they all would share the insight that 'pre-modern' societies were more 'simple'. That is: in making attempts to describe how social order is possible and organised today, one has to take into account the fact that historical evolutions and phenomena such as secularisation, development of modern technologies, industrialisation and economical globalisation brought along the need to inscribe considerations that hinder uni-disciplinary and straightforward causal 'systems analysis'. This paragraph will pause at a reflection wherein we state that, in the process of developing practical policies, certain modern

technological activities such as disposal of radioactive waste generate complexities that cannot be 'grasped' by society in a so-called holistic way, incorporating all of its contextualities, interlinkages and nuances, neither in a momentary 'dioramic view', neither through a mutual iterative process of close reading of relevant 'facts and norms'. This has consequences as well for the validity of a certain proposed social theory (as it would have to bear the test of inscribing these kinds of phenomena) but, more important in the context of this text, also when it comes to tackle these kinds of complex problems in real life politics.

In a technology assessment exercise, the complexity of radioactive waste governance can be deconstructed into its various characteristics. However, the multidimensionality and interconnection of issues, in combination with aspects of inherent uncertainty with regard to the causality-risk relation, and the problem of context shifts that obstruct a simple utilitarian benefit-burden approach apparently makes any instrumental means-end 'solution' to leak as a new issue into another thematic area and its connected value sphere. Any generic holistic approach abstracts the problem up to a highly metaphorical and unpractical negotiation level, while a focus on one certain issue by way of an artificial ('de-normative', 'exclusive') demarcation leads to an 'incomplete' approach not consistent with the idea of governance. Apparently, next to the perplexity of the individual (in making validity claims based on scientific argumentation – cf. 2.5), society as a whole could face a perplexity in that sense that joint and interactive assessment of complex risk inherent technologies can generate a complexity that surpasses the practical potentiality of political reflection and action, *even in an ideal deliberative setting*. In contradiction to the perplexity of the individual, this societal perplexity can be understood, 'in the old philosophical tradition', as a state of being complicated 'in face of complexity'. We could say that, when dealing with this kind of complex issues, societal deliberation intrinsically struggles with an overburdening, and this as well in a *cognitive, motivational* and *organisational* manner. Arguments hitting at all three characteristics of overburdening relate to 'practical' aspects in the first place: limited attention spans of individuals, practical boundary conditions to deliberation, limited time spans for negotiation in face of a certain urge (these issues will be discussed in greater depth in Chapter 6). Next to this, they are essentially to be found in epistemic grounds: whether we like it or not, there are cognitive perimeters to the ability to theorise, map, analyse and synthesise factual data, scientific arguments, uncertainties, values, norms and contexts in an overall comprehensive and useable manner, and, last but not least, to generate a certain mutual understanding among deliberating actors, irrespective of the fact the values and norms of the different actors are different or shared. Thirdly, particularly in connection with the idea of 'motivational overburdening', just as every citizen in his/her private and professional life, actors need to find balance in personal meaning and engagement for the general sake when (freely or forced) standing up in a deliberation; a balancing exercise that could surely become harder 'in face of complexity'.

Cynics might raise an eyebrow here, as we can imagine that it becomes exceedingly vague where this story of individual and collective perplexities is leading to. The suspicion might even grow more when we state that there is no clear-cut way to unravel the problem (although this could as well be seen as not really a surprise as such). Anticipating to the further elaboration of the argumentation in the next chapters, we could say that, while individual (scientific) perplexity could, to a certain extent, be accommodated in deliberation by a simple individual and collective attitude of awareness and recognition of the 'phenomenon' as such, dealing with 'societal deliberative perplexity' could *start* from

a same kind of awareness and recognition of the fact (possibility, danger) of overburdening. Based on these 'attitudes', deliberation processes should essentially incorporate joint analysis of complexity, eventual problem reframing<sup>14</sup>, finding a balance between precaution and urge (as 'driving principles'), cautious and deliberate use of knowledge in deliberation, (self-)understanding of roles and mandates as conceptualisations in a socio-political context (instead of as being 'a part of the person') and the necessary stepwise character of policy processes.

We would like to leave the elaboration on the idea of overburdening with some brief reflections on how all this would relate to 'classical' risk governance and to the idea of modernity, especially in the Habermasian approach.

Recalling the scope of this text, namely "to examine how democratic societies handle risk governance – i.e. the ensemble of rules, procedures and practices affecting how powers are exercised with respect to the control of potential adverse consequences to human health or the environment – with an emphasis on the possibilities and limits of public participation" (cf. 0.1 – WP 2 rationale), we should of course take into account the various approaches to and understandings of what risk governance actually means. Most approaches share the argument that '[...] co-ordination and possibly reconciliation between a profusion of roles, perspectives, goals and activities [...]' is the answer to the fact that '[...] the problem-solving capacities of individual actors, be they government, the scientific community, business players, NGOs or civil society as a whole, are limited and often unequal to the major challenges facing society today [...]' (IRGC 2006, pp. 11). While it remains unclear here how 'civil society as a whole' could be considered as an individual actor, this and other descriptions of governance tend to suggest that the various stakeholders all hold a 'specific part' of the (lay or expert) knowledge, and that the 'unequal and/or limited capacities' might be transcended by 'bringing it all together' on a higher level. The frame of this text does not allow further in-depth philosophical reflection on how this relates to the argument on overburdening. The idea will however be taken up again in the chapter on the RISCOP approach.

Science and technology, although next to secularisation a prime motor behind the becoming of our modern society, appears, as argued above, at the same time to be a main reason for the fact that, in cases that require risk governance, control of complexity tends to slip through the fingers of any interactive deliberative action in that same society. Looking back on the history of modernity, one could indeed state that '... Enlightenment and technological progress were thought to form a continuum together with the "practical-critical", "revolutionary activities" of social and political actors. There could be no egalitarian freedom, no democracy of the masses, and no socialism without technologically induced economic growth.' (Brunkhorst 2004, pp. 248). Ironically, we could say, this very Enlightenment, technological progress and economic growth that made our modern society to become a 'reality' in terms of global emancipation and interaction also brought along problems that cannot be grasped in its full complexity by this society.

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<sup>14</sup> In the case of radioactive waste governance f.i., the starting point for any deliberative process should essentially be 'energy policy' instead of 'radioactive waste governance'. See §6.2.1 Confining accountability, or the difficulty of gathering in the deliberation arena.

In his theory of modernity<sup>15</sup>, Habermas stated that modernisation, due to a massive growth in knowledge (particularly in the natural sciences), provoked a 'differentiation of the value spheres' of the lifeworld. The result is, he claims, that modernity brings about a vast increase in the amount and depth of specialised knowledge that is, however, always confined within a single domain, and that '... this knowledge becomes, in the same process, detached from its moorings in everyday life, and floats free from the stream of tradition which naturally progresses in the hermeneutic of everyday life' (Habermas, 1992). However, given the fact that Habermas, in his subsequent triptych of lifeworld, validity and discourse, deliberately 'connects' scientific knowledge of the lifeworld with 'truth' and with 'theoretical discourse', we state that we should not read this argument as a plea for transdisciplinarity in knowledge generation (cf. 2.5). Habermas, in his reflections on modernity, is concerned with showing how closely intertwined morality and modernity are, and with showing how, subsequently, the harmful social effects of colonisation have an impact on the morals of a community. Without going into deeper considerations about these arguments as such, we dare to say that the above reasoning about the overburdening of society may be seen as an incentive to put 'the morality' of a community into a certain perspective. Alongside the idea of 'societal accountability', we plea for an awareness for (and recognition of) a certain 'societal self-compassion' in terms of a 'sympathetic (self-) understanding' about the impotence to cope with the full complexity of certain problems within practical time and interaction spans. Obviously this understanding cannot be used as an excuse not to act. In light of recent trends to create momentum for global action by way of sollicitating responsibility through generating 'climates of fear', it might eventually be seen as an additional way to reassess and use the precautionary principle in finding motivation for governance policies.

## **2.8 Summary and conclusions**

With the critical assessment 'from within' Habermas's theory, we intended (as said in §0.1. WP2 Rationale) to expose his key concepts in order to show their implications for democracy, deliberation and participation. More specific, the text is written as a critical appropriation and reflection on the applicability of the theory of Habermas, mainly in the context of governance of radioactive waste.

As most of the ideas raised in this chapter will be taken up again in later chapters of the report, we would like to keep this closing paragraph rather concise. At this stage in the elaboration of our argumentation, we hope to have made clear that Habermas's dialogical theory of ethics and his ultimate focus on the possibility of consensus predicated on 'mutual recognition' – i.e. the realisation of a complete symmetry between participants in a communicative interaction – remains the 'mother of ideas' (if only based on 'reasonable ethical gut feeling'), and that, as we said, his theory laid out the groundwork for an argumentation that aimed to prove that fair and transparent negotiation among concerned humans in the interest of 'helping to transform society for the better' is indeed possible.

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<sup>15</sup> Habermas 'theory of modernity' is not developed as a separate programme in the same way as is theory of 'discourse ethics'. It can rather be seen as a collection of ideas and assumptions that are woven into all the various programmes.



In addition, however, we argued that his theory can be challenged based on both 'ontological' as 'practical' considerations. In short, we can boil down the previous reasonings to a few ideas 'to bear in mind' as well for further theorisation of deliberation as for putting it in practice.

#### *Recognising asymmetries of interaction*

The greatest challenge with putting discourse ethics for performative dialogue into practice would be to recognise initial asymmetries of interaction, as it is essential to recognise mandates, but at the same time to learn to recognise 'symmetry of recognition' by decoupling the mandate from the human. As a consequence, this would mean that a government nuclear expert, although having a mandatory responsibility, cannot claim 'authority' based on this mandate. As an even important consequence, it would uncover a responsibility with regard to 'societal engagement' of the citizen, next to his rights to become involved in order for his concerns to be taken into account.

#### *Recognising individual perplexity*

Apparently, when relying on scientific-technical knowledge in deliberation, the question of validity of 'truth' cannot be solved within the value sphere of 'theory'. Even in an ideal Habermasian deliberative setting, with all requirements of discourse ethics fulfilled, it would not be possible to 'argue' on complex risk-inherent technological applications until all parties 'understand' each other (with the eventual consequence of one convincing the other). Confronted with their specific perplexity in making their point while seeking to claim their 'truthfulness', the scientist, in arguing on 'what he/she believes but cannot prove', will have to ask for (and rely on) a certain kind of 'trust' offered by the citizen, while the citizen, bringing along 'what he/she fears but cannot grasp', will have to ask for (and rely on) a kind of 'compassion' from out of the experts position.

#### *Recognising societal perplexity*

In deliberation in a context of risk governance, society as a whole could face a perplexity in that sense that joint and interactive assessment of complex risk inherent technologies can generate a complexity that surpasses the practical potentiality of political reflection and action, even in an ideal deliberative setting. In contradiction to the perplexity of the individual, this societal perplexity can be understood, 'in the old philosophical tradition', as a state of being complicated 'in face of complexity'. We could say that, when dealing with this kind of complex issues, societal deliberation intrinsically struggles with an overburdening, and this as well in a cognitive, motivational and organisational manner.

#### *Putting it all together – rethinking 'attitudes'*

While natural scientists would probably disagree with our claim about 'that certain degree of impotentiality' of scientific argumentation in deliberation, our propositions on individual and especially societal perplexity may sound as music in the ears of those who think societal support is best found by way of striving towards public acceptance for a self-proposed rational-scientific underpinned and 'transparent' package deal, as 'any inclusive bottom-up problem solving dynamic would be too complex anyway'.

The opposite is of course true. This text makes no argument for 'embedded management' based on using perplexity as an excuse, neither should it be seen as an endeavour to construct a 'pragmatic philosophy of weakness' with regard to human cognition. The introduction of this report mentioned we would use 'Reason' to show 'the limits of Reason'. In this sense, the ideas above can be seen as a call for 'modesty' and self-protection with respect to our interactive problem-solving capacities. To point at what is in the blind spot of most modern and post-modern approaches to 'applied epistemology', as well as of current (political) practices that build on scientific self-confidence, is a first attempt to argue for this 'reason-with-a-small-r'. Knowledge – in the sense of awareness - about the sketched 'limitations' to the use of knowledge and mandates can be regarded as a new and additional kind of knowledge as such. From out of joint 'attitudes of awareness', building up this kind of knowledge could be seen as an essential search for a 'pre-normative' pragmatic ground of common understanding about limited potentialities; a ground that should serve to build on 'situations' of transparency and trust, and as the free zone to foster capabilities of defending a stance 'against' powerful political and economical interests. Beyond 'naïveté', it is also that kind of ground that would render strategic - but transparent - win-win situations more effective.

The kind of 'relativism' sketched here can be seen as 'post-modern but anti-sceptic'. In that sense, it is important to note here that perplexity and overburdening cannot and may not 'affect' theory and practice of discourse ethics in Habermasian sense. In simple terms, principles of equality and inclusion 'come first', and arguments on impotentiality may not be used to interpret or shortcut them.

Starting from this 'pragmatic ground of common understanding', deliberation processes should essentially incorporate joint analysis of complexity, eventual problem-reframing, finding a balance between precaution and urge (as 'driving principles'), cautious and deliberate use of knowledge in deliberation, (self-)understanding of roles and mandates as conceptualisations in a socio-political context (instead of as being 'a part of the person') and the necessary stepwise character of policy processes.

#### *Putting it all together – rethinking 'attitudes' (2)*

Nevertheless, some thoughts of disclaimer are necessary here, as by following this line of reasoning, we would risk to be perceived as inconsistent with our own critique on Habermas's underestimation of 'what people really drives' in becoming engaged in deliberation. Indeed, we said that Habermas's understanding of 'problematic situations' which interrupt the course of 'routine action' is overly focuses on the cognitive aspect of such situations, thereby ignoring the primacy of human interests in 'making sense' of situations. Instead of Habermas's overly cognitive view on the road towards co-operation and/or consensus, which necessarily has to pass the test of justification under the conditions laid out in the ISS, we proposed a different view that places the notions of 'commitment' and 'appraisal' at the centre of attention

In chapter 2, we have thus tried to 'think through' the consequences of a Habermasian point of view on 'communicative action' both at the level of interaction between individual people (or an individual and a 'structure' to which person-like characteristics can be attributed, such as a waste management organisation) and at the level of social theory - i.e. a way of describing the 'totality of what is

happening in a set of relevant interactions' (e.g. in abstract terms such as the 'lifeworld-system' couple). The concept of an ISS - even if understood in a counterfactual sense - precisely promises that 'one day', we will be able to oversee the totality of 'facts' and 'values' and come to an agreement on the relevant ones. However, we have shown that the consequences of holding a view of social life to be regulated by something like an ISS are untenable and furthermore undesirable. Furthermore, we have argued that Habermas - by according a central place to speech and language use in his theory - has a tendency to overlook something we might call 'commitment' - i.e. a form of attachment to objects, places, situations, etc. that cannot be simply 'translated' or 'transformed' into discourse. Such forms of commitment play a central and even controlling role over the more cognitive dimensions involved in making sense of interactions (which we have called 'appraisal'). Appraisal can follow its due course only if commitments are not (fundamentally) shaken. Furthermore, a lack of (personal) appraisal (e.g. a lack of knowledge about the dangers of radioactive waste, the way it is handled, etc.) can be compensated or 'coloured' by the commitments held by a person (e.g. the person has a general faith in technology or scientific progress). This of course raises the question of how to explain a change in commitment. Here, we believe that a crucial role is to be played by the notion of 'perplexity', the moment of recognition that every form of 'universality' is fundamentally tainted by 'particularism' (i.e. we can never fully explain or justify why we hold on to 'our' values). In no way can this process be 'managed' - on the contrary, letting go of commitments (particularly if they are deeply held) can be a traumatic experience. In general, we will avoid situations that could lead to such 'traumatic' experiences. Nevertheless, decisions on risk governance quite often have to be taken in a context of possibly conflicting commitments. The practical consequences of this predicament are further explored in Chapter 6, where we will discuss the 'politics' of waste governance.

## Structure - rest of the report

3. The Viable System Model
  - 3.1. Basic ideas: systems thinking
  - 3.2. Basic ideas: axioms, organisational functions, recurrent levels, etc.
4. The Viable System Model – a critical assessment
  - 4.1. Confrontation with Habermas's notion of 'system'
  - 4.2. 'Hard' vs. 'soft' systems thinking
  - 4.3. Summary/Conclusions
5. [title] (combining Habermas/VSM into RISCUM to study decision making for complex technological issues)
  - 5.1. RISCUM basic ideas: transparency channels, guardian, stretcher, etc.
  - 5.2. RISCUM's 'transparency arenas' compared to other 'arenas of democracy'
    - 5.2.1. Representative (opinion, media-responsive) democracy
    - 5.2.2. Deliberative (participative) democracy
    - 5.2.3. Legally-responsive democracy
    - 5.2.4. Market-responsive democracy
    - 5.2.5. Interest-responsive democracy (lobbies etc.)
    - 5.2.6. Challenges of multi-level governance
  - 5.3. Summary/Conclusions
6. The possible reality of inclusive governance
  - 6.1. Boundary conditions to representation and involvement
  - 6.2. 'Colonisation' of inclusive governance in the politico-economical society
    - 6.2.1. Confining accountability, or the difficulty of gathering in the deliberation arena.
    - 6.2.2. The paradox of enforcing deliberation
    - 6.2.3. Sustainable development as a driving principle?
  - 6.3. Time
    - 6.3.1. On the (f)act of leaving a mark
    - 6.3.2. On modesty towards future generations
  - 6.4. Summary and conclusions
7. Implications for policy and institutional design
  - 7.1. The right to participate
  - 7.2. Transparency in practice
  - 7.3. Trust: can it be 'managed'?
  - 7.4. Science for policy making in complex technological issues
  - 7.5. Corporate social responsibility in RW Governance
  - 7.6. Institutionalising deliberative structures
  - 7.7. Process thinking and intergenerational accountability
8. General conclusions

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