

Jurgen Habermas's views on legal validity and discourse ethics: A literature review

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Abstract

In modern states, law is often reduced to merely a tool of power. Many contemporary practices treat law as nothing more than a procedural requirement, disregarding its substantive values and the social conditions of society. This article discusses the validity of law within a political community from Habermas's perspective. According to him, the law must be discursive and stem from rational subjects capable of effective communication. The fundamental questions addressed are: how can law ideally be derived from norms within a political society? And how can law subsequently foster a democratic society? This article employs historical-factual methods, with primary sources drawn from the works of Jürgen Habermas. Habermas used discourse ethics and the theory of communicative action. Data collection is conducted through textual analysis. The article concludes that the validity of law must originate from discursive norms present in society, even though there may be tensions between theory and practice in society.

Keywords: Communicative Action, Ethical Discourse, Law, Modern State.

Introduction

Law is often used as a political and power tool that can threaten national life and democracy. In this condition, citizens have the potential to be treated as tools or simply masses whose votes are only needed during elections. On the other hand, people aware of the law often question the main symbols of legal legitimacy, which include neutrality, impartiality and determination of rules and rights (Sarat, 2017). Citizens should be considered rational subjects who can use their analytical abilities to respond to various life phenomena. In philosophy, rationality is understood as an instrument that forms norms of life derived from real experiences and everyday life.

In the era of modern democracy, the relationship between law and public space has become increasingly problematic, especially when law is often considered an instrument of power and politics. Law loses its role as a manifestation of rational consensus achieved through



public discourse. Instead of upholding justice based on citizen participation, the law is at risk of becoming a tool of manipulation that ignores the public's voice. Ideally, Public space functions as an arena where citizens engage in rational communication to form opinions that later influence law formation. Problems arise when the law that should be born from open discourse is alienated from the democratic deliberative process, thus raising questions about the law's legitimacy and the citizens' role in the legal system itself.

Political space is always marked by dissensus or disagreement, often leading to coercion, homogenisation and authoritarianism. In some cases, authoritarianism is a sign of the absence of communication in a state of law. Violence, coercion and authoritarian political practices are symptoms of human inability to utilise communicative ratios in politics.

Previous studies on the relationship between politics and law emphasise that conflict and power struggles must be understood within the framework of control mechanisms and social stability (Gluckman, 2017). Modern democratic theories also highlight society's limitations in achieving absolute consensus (Mouffe, 2017). In this context, a democratic political society is possible only if all political actors adhere to ethical principles. Jürgen Habermas addresses this issue by emphasising the importance of normativity in political life (Tjahyadi, 2003). However, the question arises: how can legal validity be maintained if consensus is difficult to achieve, and is discourse ethics capable of becoming a solid foundation in building a just political society? This requires an analysis of validity, which concerns truth, normative tightness, sincerity, and authenticity. This article will discuss legal validity and the role of discourse ethics, especially in the view of Jurgen Habermas, an important philosopher and thinker in political philosophy and sociology. Habermas's perspectives can be categorised as critical thinking and become the basis for political ethics.

Indeed, for Pancasila and Citizenship Education in Indonesia, the perspective of Habermas on that issue can contribute to the ethical considerations of democratic processes perspectives. Habermas's discourse ethics highlights the need for transparent, rational, and inclusive deliberation in decision-making, which could address public concerns over fairness and legitimacy. Integrating these principles into citizenship education, hopefully, could complement previous research on critical literacy that needs to be continuously improved (Nurjanah et al., 2024), develop a democratic citizenship education curriculum (Suyato, 2023), and provide the basis for online civic engagement (Mulyono et al., 2022). This article also enriches the debate on the sociology of citizenship (Arpanudin, 2023), which can empower Indonesian citizens to critically evaluate political dynamics aligned with promoting inclusivity and fairness.

Method

This research uses historical-factual methods with primary and secondary data sources. This is based on the fact that humans are historical creatures who develop in experience and thought. Therefore, along with the scope of their era, they must be seen according to their development (Bakker & Zubair, 1994). Primary sources were obtained through the books Jurgen Habermas: *Morality and Ethical Life: Does Hegel's Critique of Kant apply to discourse ethics* (1988), *Moral consciousness and communicative action* from MIT Press (1990), and *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy* from John Wiley & Sons (2018). Triangulation methods are employed to enhance the validity of findings by cross-referencing primary sources with secondary data that ensures a comprehensive and balanced analysis of Habermas's discourse ethics.

Data collection is carried out using textual analysis, which is carried out through the following steps: (1) the researcher focuses on one concept or phenomenon, (2) the researcher brings personal values into the research, (3) the researcher studies the research context, (4) the researcher validates the accuracy of findings, (5) researchers make data interpretations and (6) researchers create a change agenda (Creswell, 2018). From these six steps, the researcher studies the research context and makes data interpretation from the primary

sources. Researchers then generate questions that can lead to investigation and modification of theory and practice. In this type of research, practitioner-researchers tend to actively seek to understand the context and make changes for the better to reveal contradictions between values and actions (McNiff, 2013).

Result and Discussion

Social systems and legal systems are interrelated and have a reflective relationship. If a social and legal system is not based on honest discourse among citizens, this should be criticised and considered illegitimate. Citizens communicate their basic rights to create autonomy and make discourse possible. This is stated in the creation of legitimate laws. According to Habermas, such a society has relative legitimacy.

Discourse theory is at the tension between the individual and legal systems. At the individual level, it begins with a commitment to moral equality for all (Habermas, 1988). This means citizens must recognise minimum universal rights to live together legitimately under the rule of law. A legitimate legal system must consist of rules that will be enforced due to the best practical discourse. Habermas places the formation of rational collective will outside formal organisations. Discourse does not regulate and can only produce communicative power that cannot replace government but can influence it. This influence is limited to the granting and withdrawal of legitimacy that has been granted.

In his book *Between Facts and Norms*, Habermas situates civil society within the "lifeworld," a realm focused on personal life. However, Habermas acknowledges that many social interactions are "strategic," which means that individuals often bring personal agendas into discussions which aim to influence outcomes for their benefit. This can sideline the pursuit of truth and justice (Habermas, 1998, p. 345). In this context, strategic communication is frequently misunderstood. It often involves manipulation or the use of power, such as economic threats or promises of rewards, which contrasts with convincing others by demonstrating the rational merits of one's goals. Habermas argues that his discourse ethics is better suited to democratic societies than other political systems (Johnson, 1991, pp. 181–201). In liberal societies, Habermas critiques, balance is achieved when citizens accept laws as legitimate. Such laws safeguard both personal autonomy and the autonomy of public institutions. One role of critical theory is to promote and legitimise the critique of discourses and the processes that generate them (Habermas, 1998, p. 130).

Habermas believes humans and society have freedom and create their *nomos* (autonomous). The ideal society for Habermas consists of subjects that have freedom and can create their laws and norms of life. The term "*nomos*" in Greek means 'rule of law', habitual norms, and living law in the sense of law that lives in the actual situation of society's life. In this case, society is assumed to be able to regulate and organise itself in the public sphere. From the brief description of Habermas's views on society above, as well as his influence and intersection with previous thinkers (and a little about the *zeitgeist* of his time), it is possible to formulate the position of Habermas's theory in the context of societal emancipation. Habermas tries to overcome the problem of normativity in political society (Tjahyadi, 2003).

Habermas's approach is at the level of moral theory used by rational individuals when evaluating norms. This stance is a combination of pure reason and experience that allows for a special type of discourse to debate value claims. Using these discursive procedures also creates a good environment when society is encouraged to take responsibility for collective decision-making and think more clearly about their own decisions and the interests of others (Froomkin, 2005).

Two basic ideas that complement each other in Habermas' discourse ethics are substantive and procedural. Habermas believes in rationality, which can be used to see (some) truths about values. Although reason is based on experience, this reason can lead to conditions

that must exist in a society before it can make legitimate decisions. For this reason, Habermas states:

"The basic rights citizens must grant to each other to legitimately organise their lives together." Habermas does not claim that the application of these truths is timeless or transcends all historical and cultural issues, but rather that they are merely a function of the basic conditions, mainly procedural (e.g., equality and the absence of coercion) necessary for a debate to be conducted so that its outcomes are legitimate (Froomkin, 2005).

Habermas also asserts that adherence to principles tends to produce legitimacy among participants in legal institutions. Unlike basic choices about human rights that are necessary for legitimating discourse, most decisions about practical political questions, including some about rights, do not derive their legitimacy from abstract reason. Habermas's conception of pure reason requires a welfare state to ensure everyone has a certain degree of autonomy. Practical decisions are legitimised by reference to the procedures used to decide them, provided that they are legitimate (Lafont, 2003).

Habermas argues that discourse ethics is not the same as the ways totalitarians. This is because the goal of justifying all means is completely inconsistent with discourse ethics (Habermas, 1990). Habermas sees critical theory as something assertive and hypothetical. If someone is sufficiently aware of their physical and cognitive condition and if they are aware of the theory, then rationality is needed to adopt the conclusions suggested by the theory. According to Habermas, the early version of discourse theory was intended to benefit cooperation. A norm is considered valid if all the consequences and the side effects of general obedience can be anticipated to satisfy everyone's interests. These consequences are prioritised over the possibility of known alternative regulations (Murphy, 1994). Meanwhile, according to Rasmussen, Habermas's critical theory began to form an alternative argument to the theory that Horkeimer and Adorno had previously placed. Habermas draws on certain resources in the contemporary German philosophical tradition that his mentors have neglected (Rasmussen, 1996).

Discourse ethics is useful for someone to reach an understanding of the validity of claims. This happens in communication conditions. This discourse principle is very abstract, and there is no ideal example of how a society can achieve it. In his work "Between Facts and Norms", Habermas says:

"Rational discourse" should include any attempt to reach an understanding over problematic validity claims insofar as this takes place under conditions of communication that enable the free processing of topics and contributions, information and reasons.... The expression also refers indirectly to bargaining processes insofar as these are regulated by discursively grounded procedures (Habermas, 1998, pp. 107–108).

This condition allows one to process information and reason. This explanation also indirectly refers to the bargaining process insofar as discursive procedures regulate it. Debates about social order, namely, how to achieve the good life, are always based on facts and the participants' experiences. So, the best that can be hoped for is to achieve legitimate rules by achieving the ideal for the participants. This must meet certain minimum requirements to reach "practical discourse."

How well, then, must a discourse validate norms to produce legitimate rules? Some of Habermas's writings suggest that only processes that perfectly meet the lower criteria of "practical" discourse can legitimate their outcomes. When other options fail, participants should criticise them to achieve something better. Nevertheless, Habermas's discussion of the lawmaking process seems to acknowledge the inevitability of human error:

Due to their idealising content, the universal presuppositions of argumentation can only be approximately fulfilled. Moreover, because there is no criterion independent of the

argumentative process, one can judge only from the participant's perspective whether these demanding presuppositions have been sufficiently fulfilled in each case. This, by itself, warrants an openness to the possibility that provisionally justified views might have to be revised in the light of new information and arguments (Habermas, 1998, p. 178).

To achieve mutual understanding through discourse, the understanding depends on the context marked by the individual's capacity to learn. So, achieving the best practical discourse is not easy, and most philosophers see it as impossible (Habermas, 1998, p. 178).

Critical rule-making theory requires that participants engage in the best practical discourse and provide a self-reflective perspective into the discourse. This perspective is important if participants want to avoid excessive egoism and ideological errors. It is useful for navigating between dogmatism and relativism (Habermas, 1998, p. 179). Then, the effort to make the rules themselves must include an explanation of how it happened and why the rules apply and deserve respect.

Habermas argues that the State must be able to guarantee basic individual freedoms, starting from freedom of speech, which guarantees basic material conditions of life so that participants in decision-making can make decisions freely, equally, and without coercion. This can be achieved only if it is equipped with basic freedoms, and everyone has the potential to participate equally in a discourse that can produce legitimate rules (Habermas, 1998, p. 291).

Habermas acknowledges that the social order that regulates norms and laws does not only originate from formal institutions:

"Every social interaction that comes about without the exercise of manifest violence can be understood as a solution to the problem of how the action plans of several actors can be coordinated with each other in such a way that one party's actions "link up" with those of others. An ongoing connection of this sort reduces the possibilities of clashes among the doubly contingent decisions of participants to the point where intentions and actions can form more or less conflict-free networks, thus allowing behaviour patterns and social order in general to emerge (Habermas, 1998, pp. 17-18).

Habermas divides three interconnected life systems, namely, administrative, economic, and public spheres. The individual's "lifeworld" comes from a person's contact with others, which then intersects in the three spheres (Habermas, 1998: 53). Discourse theory aims to create legitimate rules in the public sphere. These rules then regulate behaviour in other spheres (Habermas, 1998, p. 376). Meanwhile, the market is part of the economic ecosystem separate from the public sphere. In Habermas's view, it is not legitimate for the emergency of the market space to dictate rules directly to the public sphere. In his terms, this can be seen as a "maxim" or "rationally motivated belief" (Habermas, 1998, p. 432).

However, Habermas's main objection is that the "lifeworld" is influenced by the market system and the regulatory system of administrative power. The market system dominates the realm where public policy is determined rather than shaped by collective decisions. Therefore, in the Habermasian definitional construct, market-based choices cannot be considered legitimate without some prior discourse-based decision-making choices to delegate those choices to the marketplace. Regarding freedom in cyberspace, market-based choices have developed without much political or philosophical discourse, let alone practical discourse (Froomkin, 2003)

A good deliberative process requires (1) access to balanced information, (2) an open agenda, (3) time to consider issues broadly, (4) freedom from manipulation or coercion, (5) a framework of rules based on discussion, and (6) participation, (7) scope for free interaction between participants, and (8) recognition of differences and rejection of statuses made based on prejudice (Coleman & Gotze, 2001). This impacts the process on the internet, which can foster the construction of critical theory on how decisions can be made in a global society. In

this case, Habermas's discourse ethics is expected to be used to make important decisions that are of quality and have an impact on many people.

Participants involved in discourse and interaction must understand truth and moral claims. Truth claims are claims about the objective world that all humans shares. While moral claims relate to the norms of interpersonal relationships that must be owned by autonomous adults, they can be rationally accepted from the perspective of justice and mutual respect (Habermas, 1998, p. xv).

If the claim is valid, then every competent speaker must be able to accept the claim based on good reasons. When a claim is contested, rational acceptance requires a change from actors into a discourse where the emphasis on action is neutralised, and they can isolate and test the disputed claim solely based on argumentation (McCarthy, 1981).

Communicative agreement requires a background of consensus on things that are not a problem for group members. The background provides shared resources for managing conflict and as a source of various identities. This also reduces the number of issues that may be contested at any given time, resulting in broad social interactions that rest on a stable basis and unquestioned consensus.

Habermas sees a way of resolving conflict that starts from something communicative and then moves to strategic action. Rather than trying to convince each other of each claim of validity regarding intrinsic strategies, it would be better for the parties to start bargaining to encourage the other party to work together to achieve a certain goal. In a more general sense, an actor must be able to adopt a strategy related to getting what he wants in an environment. This attitude is appropriate for people involved in various contexts. In fact, according to Rehg (2023), the need for modern law arose, among other things, because economic growth in the context of the capitalist market was dominated by strategic action and became increasingly important for social coordination.

How, then, if conflicts arise? Conflict resolution will become easier if more and more group members limit discursive efforts to a few issues of validity claims. An example put forward by Rehg in the translator's introduction in *"Between Facts and Norms"* is:

"If there is a dispute about the best way to deal with a flood, (you can imagine a city council meeting), then there is a greater chance of reaching an agreement if we can answer the empirical question about the effectiveness of two competing strategies, rather than arguing about criteria of justice or what counts as a successful outcome" (Habermas, 1998: xxxiii).

So, to reach an agreement communicatively, a consensus background is needed that will not be a problem for group members in the future. Habermas's proceduralist approach is useful in identifying problems in various issues, such as workplace and labour politics (Alexy, 2020). Habermas's proceduralist paradigm allows one to see further implications of the internal relationship between public and private autonomy and, therefore, between equal individual freedom and political self-determination (Habermas, 1998, p. xxxiii).

The implicit agreement is represented by the lifeworld background that can stabilise a communicatively integrated group as it removes many assumptions from the challenge. It is as if validity is combined with the facts of a particular cultural background. This happens because the background not only provides its members with resources that can be shared to manage conflict; as a source of shared identity, but it also reduces the issues that may be contested at a certain time so that there is a broad social interaction based on stability and unquestionable consensus.

Habermas himself sees the concept of the lifeworld in his "Theory of Communicative Action", volume 2 as: for its members themselves, the background is unthematic, but theorists can distinguish resources into three major components: a collection of certainties and ideas

that are taken for granted (considered as something certain and ideas ("culture")); norms, loyalties, institutions, and so on that guarantee group cohesion or solidarity ("society"); and competences and skills that have been internalised by its members ("personality"). A decent lifeworld will be reproduced through transmitting cultural ideas, social integration, and socialisation of its members (Habermas, 1987, pp. 119–152). If members cannot agree on resolving a conflict, they can try to bargain. Habermas sees it as a way of resolving conflict, which involves a certain change of perspective on each part of the conflicting parties, from communicative action to strategic action. However, the need for modern law arose because of the growth of the capitalist market economy, in which the context dominated by strategic action became increasingly important for social coordination.

The basic elements of Habermas's concept of modern law include (a) an explanation of the characteristics of modern society, (b) the distinction between communicative and strategic action, and (c) an explanation of communicative action in terms of validity claims that must be proven true in various types of discourses (Habermas, 1998, p. xvii). Habermas, in this case, sees a series of more complex discourses that underlie the making of laws. This discourse approach is the key to his argument; democracy and law enforcement must be interconnected.

The law regulates interpersonal relations similarly to moral norms. Still, it only does so within communities with a specific history, are plural and have a shared understanding of the common good. Issues of justice and collective policymaking are an important part of law and politics. Attempts to explain legitimacy often turn to one kind of discourse or another, depending on whether private or public autonomy is given greater emphasis.

Habermas sees a general tendency in modern natural-law theory to be merely an expression of the law of mutual respect, that one must show others one's function as a morally autonomous agent. In contrast, emphasising the importance of shared tradition, civic virtue and agreement on the common good has led to a community's ethical discourse reflecting its substantive values and traditions in determining what action is good in each social situation. Habermas borrows this view from the Rousseauian concept of the republican citizen (Habermas, 1998, p. xxvi).

To overcome this problem, Habermas emphasises the legitimacy of the discursive principle (D), which is impartial to norms in general and underlies morality and law. "Only those norms are legitimate which can be agreed upon by all those affected as participants in rational discourse" (Habermas, 1998, p. 107). Habermas hopes to avoid a moralistic interpretation of the law and its consequences in favour of private autonomy in the form of human rights. At the same time, the discursive principle points to a legitimacy model that weakens the liberal-republican view's divisions. Legitimate law must pass a discursive test that potentially involves all different types of discourse, not only moral and ethical discourse but also "pragmatic" discourse. Moreover, legal regulations must involve fair compromises when an issue involves parties with conflicting interests and values that do not allow for consensus (Habermas, 1998, p. xxvi).

Habermas divides rights into five categories: (1) membership rights, (2) due process rights (which include individual freedom of choice, and thus (3) private autonomy). These three are basic negative freedoms. Then (4) the right to political participation that guarantees the authority of public autonomy. Habermas argues that these rights are necessary and cannot be simply reduced to others. Without the first three sets of rights, there would be no private autonomy (so there would be no freedom and equality of legal subjects). However, without the fourth right that regulates the law and guarantees private autonomy, according to Habermas, it would only be paternalistic coercion. The right to political participation allows citizens to shape and define the rights they enjoy as "personal autonomy" and become "creators of laws that make their subjects recipients." Then, right (5) is social welfare. This right becomes necessary insofar as the implementation of civil and political rights depends on certain social and material conditions so that citizens can meet their basic needs (Habermas, 1998, p. xxvii).

Political discourse then becomes a source of motivation and will of citizens that produce "communicative power". This power impacts formal decision-making and actions that represent the expression of political "will." According to Habermas, failure occurs when attempts to deliberate democratic politics cannot be channelled through legitimate sources of communication. Habermas's procedural account must show how the political system can be linked to the broader democratic communication processes of society and have the quality of legitimacy through one sub-function of the system, among many others (Habermas, 1998, p. xxvii).

In this "two-track" view of democratic lawmaking, deliberation and decision-making must be formally institutionalised and open to input from the informal public sphere. This means that the political system (and government in particular) must not do so as an independent system that runs solely on its terms. Conversely, the public sphere must not be subverted by power, whether the power of large organisations or the mass media. Habermas places a great deal of normative responsibility for democratic processes on public forums, informal associations, and social movements—situations where citizens can effectively voice their concerns.

In his book *Between Facts and Norms* Chapter 8, Habermas analyses the conditions under which the public sphere can fulfil its democratic function. These conditions include channels of communication that connect the public sphere to a strong civil society where citizens first perceive and identify social problems, informal associations, responsible mass media, and agenda-setting channels that allow broader social concerns to receive formal consideration in the political system (Habermas, 1998, pp. 329–359).

The proceduralist paradigm allows one to see further implications of the relationship between private and public autonomy or equal individual freedom and political self-determination. Habermas also suggests that the proceduralist approach demands a new way of separating powers that requires a more democratic and participatory form of government (Habermas, 1998, p. 84).

What happens if a society is built upon undemocratic foundations or where public participation is highly restricted? These conditions reveal critical limitations in Habermas's theory when applied to practice. For instance, while Habermas emphasises the role of rational discourse and deliberative democracy, such ideals can falter in environments lacking equal access or where systemic inequalities stifle genuine participation.

A comparative lens can be drawn from the U.S. Supreme Court, which practices rights-based judicial review. In this context, majority rule is often tempered to mitigate potential tyranny by incorporating proportional mechanisms and fostering compromises among shifting coalitions of minority groups. While this system attempts to uphold self-governance and prevent oppression, it exposes flaws in traditional majoritarianism, particularly within the American plurality system, which stands as an exception rather than the norm in mature democracies (Bellamy, 2017).

This analysis highlights that while Habermas's theory envisions an ideal communicative space, its practical application may be challenged by systemic barriers and the necessity of institutional checks to maintain democratic values. Thus, deliberative democracy must account for diverse societal conditions and integrate adaptive mechanisms to promote inclusivity and fairness.

The practical implications of Habermas' communicative rationality appear in the legal pursuit of justice. In Indonesia, certain legal rulings, such as the approval of Gibran Rakabuming's vice-presidential candidacy in 2024, may meet legal standards but challenge the public's sense of justice. Like those in the Constitutional Court, court processes assume an impartial examination of conflicting interests. While absolute justice is elusive due to possible biases from involved parties or judges, the concept of justice remains essential. It serves as both

a foundational and regulatory ideal, guiding fair procedural standards and upholding the court's integrity. So, the challenges of Habermas's theory are when applied in the real world, where power manipulation, unequal access to information, and strategic interests often influence communication processes. The ideal discourse envisioned by Habermas is difficult to achieve, especially in societies with asymmetric power structures and conflicting individual or group interests.

The concept of procedural reason in Habermas's theory can be illustrated through the judicial process, where validity is tested through intersubjective procedures rather than subjective assumptions. Here, the rationality of outcomes stems from a collectively recognized procedure rather than a single, isolated perspective. In judicial settings, justice is pursued through rational discourse among all parties involved, affirming that reasoned outcomes are achieved through collaborative rather than individualistic efforts. This approach emphasizes that the validity of rational conclusions relies on shared procedural frameworks.

The rational validity of a claim can only be established through communicative processes, relying on mutual understanding among participants. Procedural reason is, in essence, an extension of communicative reason, emphasizing that justice is unattainable when power interferes in judicial processes and rationality is compromised when claims arise under coercion. Therefore, rational claims require a framework that allows individuals to speak freely, without force or authority. Intersubjective validation and mutually accepted procedures are foundational elements that uphold procedural reason.

From Habermas's perspective, the practical implications of Supreme Court or Constitutional Court decisions can be seen as catalysts for "widespread public discussion" in media, classrooms, and other public forums. These decisions often highlight fundamental principles that may not emerge as clearly from legislative processes alone. While debates within the Indonesian government may have their shortcomings, they still manage to provoke equally vibrant and principled discussions outside formal chambers. These public conversations, stimulated by legislative and judicial actions alike, can be vital to fostering democratic discourse.

The case involving Gibran Rakabuming Raka and the Constitutional Court in 2024 can be analysed through Ronald Dworkin's legal philosophy, particularly his views on democratic principles and judicial intervention. Dworkin aligns with Habermas in emphasising the importance of political morality in shaping democratic systems. Dworkin emphasises that courts are not inherently anti-democratic when overturning legislation; instead, their decisions can enhance democracy if they correct laws that fail to uphold the "best" understanding of democratic values. This perspective hinges on due process and equal respect for all individuals in legal judgments.

In Gibran's case, the court's decision to lower the minimum age for presidential and vice-presidential candidates has been criticised as favouring specific individuals, notably Gibran, raising concerns about nepotism and ethical compromise. Critics argue this decision undermines democratic principles of fairness and equal opportunity. However, from a Dworkinian perspective, the legitimacy of the ruling would depend on whether it was made to improve the democratic framework—such as expanding opportunities for younger leaders—or whether it merely served personal or partisan interests.

Dworkin would likely caution against framing this as a straightforward case of democratic loss or gain. He contends that a regime, even one ostensibly treating its citizens with "equal concern and respect," must be evaluated based on whether it facilitates genuine self-governance and collective decision-making. If the Court's decision aligns with these democratic ideals, it could theoretically strengthen democracy. However, if it prioritises political expediency or perpetuates systemic inequalities, it reflects a paternalistic distortion of democratic values rather than their realisation. Thus, the ethical dilemma in this case lies in

distinguishing between a judicial action that genuinely enhances democratic fairness and one that undermines it under the guise of inclusivity or reform. This calls for greater transparency and accountability in judicial processes to ensure public trust in decisions that significantly impact democratic governance.

This perspective is reinforced by Habermas's assertion that "in the age of completely secularised politics, the rule of law cannot exist without radical democracy" (Habermas, 2015). Habermas argues that legitimate law and radical democracy are not only co-original but also continuously co-originating through an ongoing process of reform. In this process, citizens actively apply the discourse principle to shape the legal framework (Baxter, 2002). This aligns with his broader philosophy that the legitimacy of law arises from democratic deliberation, where public discourse ensures laws reflect shared moral and rational principles, fostering both justice and democratic participation.

Democracy, in one view, is seen as a process rooted in the discovery of shared values (Habermas, 2015). Habermas critiques this perspective for framing citizenship primarily in ethical terms—as membership within a community bound by common values—rather than legal-political terms. His position seeks to address these approaches' shortcomings by emphasising the courts' role in safeguarding the norms of democratic discourse (Habermas, 1986)). These norms, according to Habermas, are universal preconditions for rational communication aimed at achieving consensus rather than being relative to specific societies or individuals.

Furthermore, Habermas asserts that a constitutional court, guided by a procedural understanding of the constitution, does not need to overextend its authority. Instead, it can act within its legitimate boundaries by upholding the law through the "logic of argumentation" (Habermas, 2015). This approach reinforces his belief in the universality of democratic norms and the critical role of judicial processes in maintaining the integrity of democratic systems.

In conclusion, the rule of law can be understood as a purely political construct. Sceptical of judicial supremacy in societies characterised by deep moral divisions, this perspective argues that it is impossible to separate the impartial viewpoint embedded in a liberal democracy's institutions and laws from contested views of morality, social justice, and the good life (Gerstenberg, 2019). For democratically responsible citizens to adhere to the directives of a coercive legal system, such a system must also appeal to moral motivations. Through a legal order acceptable to all affected parties, social solidarity can extend into the morally neutral, differentiated spheres of modern economic societies. In this way, the law acts as a "transmission belt" for fostering social integration and solidarity. Habermas rejects court-centric legalism in favour of his "proceduralist paradigm of law." This paradigm seeks to balance the complexities of modern administrative and welfare states by assigning judicial review a critical role. Specifically, judicial review must ensure a fair equilibrium between the law's function in protecting individual autonomy and its role in advancing social policy. This approach reflects Habermas's commitment to a legal framework grounded in democratic deliberation and consensus rather than one dominated by judicial authority.

Conclusion

Based on the results and discussion above, according to Habermas, legal validity depends on individuals' freedom and autonomy contained in the principles of discourse ethics. In this case, the moral commitment of everyone becomes very important. Discourse ethics includes substantive and procedural aspects, which aim to produce legitimate decisions. Norms are considered valid if they can meet the interests of all parties. The political system that best supports the application of discourse ethics is a democracy, compared to other systems. However, Habermas's perspective, like other philosophers, tends to be theoretical and pays less attention to empirical aspects and the complexity of social reality. Communication in society often involves power and manipulation. Habermas argues that certain idealized conditions are

non-negotiable prerequisites for genuine consensus, as they are inherently active in daily communication. Agreements formed through power, manipulation, or violence serve only the interests of the ruling party and lack legitimacy. Common intuition resists the notion that a coerced, one-sided agreement should be universally binding. Instead, a legitimate consensus requires the involvement and agreement of all parties. Habermas amplifies this everyday understanding in his discourse theory, emphasizing that true legitimacy stems from inclusive, undistorted communication. The limitation of this article is that it does not explore in detail the practical mechanisms needed to apply the principles of discourse ethics in the process of making laws and legislation in concrete terms.

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Authors' contributions

RF, doctoral student, drafting the manuscript, literature review, citing sources, self-editing, corresponding author, responding to feedback from the editor. S promotor, develops research questions and methodology, helping in the analysis and interpretation of theories. ST co-promotor, complementary expertise in Habermas theory, enriching the manuscript with perspectives.

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