

Minimal ethics. An expression of contractualism

It assumes that universally valid ethical principles do not exist

Minimal ethics is an extension of contractualism and, therefore, part of its same presupposition: the impossibility of establishing universally valid ethical principles compels political communities to “take refuge”^[1] in *reaching agreements* that revolve around the minimal ethics that guarantee social peace. Due to their strategic nature, they do not allow the common good to be affected by matters of conscience, because the idea of consensus would correspond to the idea of the legitimacy of the law and voluntary obedience or, failing that, of the necessary coercion. *Minimal ethics, in short, appeals to the primacy of praxis in the most utilitarian sense of the term.*

Insofar as contractualist, its source should be sought in [liberal-empiricist philosophy and the Hobbesian tradition](#), as well as in Jürgen Habermas’s theory of deliberative action. Because of its Hobbesian root, it places the framework of the moral in the context of political and social order. Only politics allows the “fallacy” of synderesis (man’s natural ability to judge rightly) to be overcome, replacing it with the requirement for peace, the



source of the greatest well-being to which we can aspire^[2]. Because of its empiricist root, minimal ethics limits the ethicality of acts to their approval or disapproval by society, converting ethics into a sort of consequentialist and emotivist-style strategy: consequentialist, because common to the things that cause us pleasure is their usefulness; and emotivist, because the pleasure or displeasure we feel regarding certain actions depends more on

feelings than on rational reflection.

The tool of minimal ethics is the consensus, which demands *a priori* unwaivable ethics from its interlocutors: acquiescence with the intersubjective validity of the rule that requires the agreements reached to be maintained. It should be considered, however, that such a consensus is only possible **in a context of total abundance**^[3]. Furthermore, the discussion is never completely free of dominance, because the debate always favours intellectuals who can express themselves more clearly^[4].

Minimal ethics becomes mere proceduralism when the aim of consensus is not the moral content itself.

It is true that the consensus to which minimal ethics appeals is not merely factual, but eminently rational. It includes, therefore, the interests of all those affected by the agreed rule and not only those who participate in the discussion. However, insofar as discursive, minimal ethics only includes beings capable of communication among those affected.

These “must be recognised as persons, because they are virtual interlocutors in a discussion in all their acts and expressions, and the unlimited justification of thought cannot refuse to consider any interlocutor and any of their virtual contributions to the discussion”[5].

That said, some human beings, such as anencephalic patients, those in a persistent coma and human embryos have no ability to communicate, while some non-human individuals do.

To overcome this difficulty, minimal ethics appeals to the recognition of personal dignity as an inexcusable minimum for the moralisation of law and democratic coexistence. But that appeal is contentious when there are ideologies that consider the **State above individuals**. Above all, though, in failing to allow a foundation of human dignity that is self-imposing, it *trivialises and reduces the concept of dignity* itself by transferring the legislative capacity of the will to the simple exercise of self-determination. This reworking of the Kantian immanentist principle excludes some human beings – the mentally disabled and unconscious patients unable to communicate – from personal status, reducing them to mere “social bearers of significance” insofar as they would not have their own rights, but only those derived on the basis of their social relevance and the interests of their environment.

Consensus dynamics requires, in addition, conversion of fundamental convictions into mere disposable hypotheses, revoking the right to have one’s own convictions that allow the convictions of others to be considered as wrong[6] and falling back on a sort of totalitarianism that is made clear, particularly, in *the contemporaneous imperative that restricts the freedom to express “politically incorrect” beliefs in public*. It thus forgets that in a constitutional State, the coercive power of the law does not require acquiescence with the values that found it. When ethics becomes only a pact, societies become realms of the hypothesis, human aggregates in which religious beliefs and personal relationships themselves – which by their nature cannot be replaced by an equivalent reality — are incomprehensible in the public context[7].

In this sense, agreed consensus has no moral authority for the mere fact of representing the personal will of the majority, unless these conditions are met:

a) that the truth cannot be demonstrated with rational contents; and

b) that the majority is imposed only in those societies which, by reason of their homogeneity, allow all their members the opportunity to express their opinion as majority[8]. In order for the consensus to be truly rational, it should not reproduce the unequal distribution of opportunities that occurs in real life. Establishment of the axial principle of political order on consensus assumes, in fact, an “equality” that rarely occurs among members of the political community. Moreover, the interlocutors must demonstrate the moral and intellectual competence necessary to participate in the discussion[9].

“Universal consensus” and “broad-based consensus” are not, incidentally, the same thing. In fact, the majority only substitutes totality by exercising a despotic power that consists of identifying the “personal will” of the majority with the supreme will and public interest. Furthermore, there are many occasions on which consensuses are contrary to reason and turn against the same majorities that adopted them, as the history of those people who massively supported totalitarianisms that limited their freedoms demonstrates.

Another controversial aspect of minimal ethics lies in the extrapolation of the benefits of political consensus to the field of the moral, especially as refers to organic life, sexuality and ethnic and religious issues. Appealing to the minimums in these questions slides ethics down a “slope” and turns it into a sort of “downwards ethics”, a repository of a pessimistic view of man. He would act moved by its own welfarist interest, disdaining all consideration to the maximums of happiness and sense.

Minimal ethics runs the risk, in short, of becoming a “theory of coexistence (or of convenience)” that would not be at the service of excellence but that of mere survival; an ethics that would, consequently, fall into the naturalistic reductionism described by Jean Rostand[10] and the functionalism of conservation; an ethics that would be built on the pillars of an anthropology that does not respect man as an image of the Absolute and *reduces it to its medial function as environment, advantage or benefit*. For contractualist ethics in general — and for minimal ethics in particular — the essence of man would not be love, but mutual mistrust and conflict. Hence, the moral act, and even moral man himself, must be “what is agreed” in society. A man and a behaviour conveniently agreed at the service of a social peace that would otherwise become impossible.

Therefore, it could be said that minimal ethics does not penetrate the “inside” of human experience. Instead, it removes the distinction that we all make daily between what Aristotle called *zen* and what he called *eu zen*; the distinction between “life” and “good life”[12]. Because, even conceding that subjective states arise from the need to survive, they continue to exist when this goal is reached. As much as life aspires to preserve itself, its inner form is not a function at the service of this objective[13]

Another question to consider is the following: when appealing to *pluralism*, minimal ethics claims that the imposition of a moral code would mean an attack against the doorpost of the democratic system and equip “the agreed” with “the moral”, it opens an unbridgeable gap between public and personal morals. The former would represent political correctness and would be herding of the epochal conscience. The second would become irrelevant for taking collective decisions.

There is, finally, the fact that **minimal ethics becomes mere proceduralism when the aim of consensus is not the moral content itself** — where one can have different or even opposing points of view — but the authority of the legislator to impose the rules. In this regard, we should ask ourselves if the ethicality of the rule can depend on democratically generated legal procedures or if, instead, it calls for ethical and pre-political convictions that cognitively ensure the **foundations that justify it**[14]. As Alejandro Llano notes, political principles and legality are an unstable basis upon which to build a long-lasting collective. There is no room for a “purely procedural” interpretation of truth and good,

which resigns itself to the moral of proper functioning and renounces dialogic enquiry about the contents of the good life[15].

Conclusions.

1. Minimal ethics assumes that universally valid ethical principles do not exist. Hence it settles for the achievement of a *consensus on minimal ethics* that guarantees peaceful coexistence, falling back on proceduralism.
2. With respect to its sources, it owes theses to contractualism, Hobbesian ethics, empiricism and consequentialism.
3. In turn, it is a repository of a pessimistic view of man, whose moral act would be guided by his own welfarist interest alone.
4. Minimal ethics is faced with an insurmountable contradiction: *while it establishes the dignity of the person and their fundamental rights as minimal ethics, it denies that there is a fundamental conviction regarding dignity and rights that is self-imposing*. In this way, it becomes inconsequential because at any time, and as a result of a pact of convenience, some human beings could be excluded from the personal status and see their fundamental rights revoked.
5. Minimal ethics opens a gap between personal and public ethics and, in doing so, becomes a sort of strategy *at the service of the personal will of the majority*.



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[1]Adela Cortina confesses in her book “to have humbly taken refuge in minimal ethics”, A. *Ética mínima. Introducción a la Filosofía Práctica*. [Prólogo de J. L. L. Aranguren] Tecnos: Madrid, 139)

[2]Cfr. Hobbes, De Cive I, C.I., § 738.

[3]Cfr. Spaemann, R. (1972). Die utopie der Herrschaftsfreiheit. Merkur , n. 292, pp. 735-752. Retrieved from: https://volltext.merkur-zeitschrift.de/preview/5536043a546f88a5268c896d/mr_1972_08_0735-0752_0735_01.pdf.

[4]Cfr. Spaemann, *Felicidad y benevolencia*. (J. L. Del Barco, Trad.). Madrid: Rialp, 204.

[5]Apel, K.O. *Transformaiton der Philosophie*. Frankfurt, 1973, Bd. 2, p. 400. Hay traducción al castellano de A. Cortina, J. Conill y J. Chamorro, Madrid, 1985, p. 380-1.

[6]Spaemann, R., & Llano, A. (2004). Europa: ¿Comunidad de valores u ordenamiento jurídico? / El carácter relacional de los valores cívicos. Madrid: Fundación Iberdrola, p. 15.

[7]Cfr. Spaemann, R. (1993). La resaca del relativismo. (J. Antúnez entrevistador). Aceprensa, n. 149 (93).

[8]Cfr. Spaemann, R. Las intervenciones técnicas sobre la naturaleza como problema de la Ética política. En R. Spaemann, (2003). Límites. Acerca de la dimensión ética del actuar (pp. 429-444). Madrid: Ediciones Internacionales Universitarias, (432.)

[9]Cfr. Spaemann, *Felicidad y benevolencia*. (J. L. Del Barco, Trad.). Madrid: Rialp, 202-203.

[10]Rostand afirmaba que la naturaleza no es aristocrática ni consagra la eminencia. Vivir es un examen de viabilidad, no de excelencia, y la selección natural no pretende llevar a la especie a un nivel superior, sino tan sólo impedir que se pierda. De ahí que, democráticamente, mantenga la honesta media.

[11]De anima 434b, 21

[12]Spaemann, R. (2000). *Personas. Acerca de la distinción entre «algo» y «alguien»*. (J. L. Del Barco, Trad.). Pamplona: Eunsa.2000, p. 193

[13]Spaemann, R. (1991). *Felicidad y benevolencia*. (J. L. Del Barco, Trad.). Madrid: Rialp,.86

[14]Habermas, J., & Ratzinger, J. (2004). Las bases morales prepolíticas del estado liberal. Tarde de discusión. Munich: Academia Católica de Baviera. Recuperado de: http://www.uca.edu.ar/uca/common/grupo57/files/las_bases_morales_prepoliticas.pdf el 12 de junio de 2014.

[15]Llano, A. (1999). *Humanismo cívico*. Barcelona: Ariel, p. 37.



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