

APPLIED ETHICS

Perspectives from Romania

Edited by
Valentin MUREȘAN
Shunzo MAJIMA



Photo by Tudor MUREȘAN

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Preface

The volume *Applied Ethics. Perspectives from Romania* is the first contribution that aims at showing to the Japanese reader a sample of contemporary philosophy in Romania. At the same time a volume of contemporary Japanese philosophy is translated into Romanian and will be published by the University of Bucharest Press.

Applied Ethics. Perspectives from Romania includes several original articles in applied ethics and theoretical moral philosophy. It is representative of the variety of research and the growing interest in applied ethics in the last few years in Romania. The philosophy practised here is at the same time an international activity, but also a kind of research deeply involved in Romanian realities. The contributors to the volume are Romanian philosophers from the most important Universities in the country, including members of the Romanian Academy, but also junior researchers.

This volume was made possible thanks to the relationship established between the Applied Ethics Centres of the University of Bucharest, Romania, and Hokkaido University, Japan. I hope that this academic and scientific cooperation will flourish in the near future. The bridge is there to stay.

Prof. Dr. Mircea DUMITRU

President of the University of Bucharest

Is Applied Ethics Still an Application of Ethics? A Short History of Applied Ethics in Romania

Valentin MUREȘAN
Shunzo MAJIMA

Moral philosophy is more than two thousand years old. The interest in its powers of application dates back to the same ancient period. Instead, what we have called since the second half of the last century “applied ethics” is barely sixty years old, while the subject of research that we call today the *new* applied ethics is even younger. Romania did not make any contribution to the birth of applied ethics, but has been participating in its development for the last twenty years.

Originally, applied ethics, as an academic speciality, was a kind of smart-course meant to capture the interest of as many students as possible on campus – a kind of “pop-course”. In the 1960s the Western world was boiling on the verge of big transformations. Students and workers were sincerely interested in the great public debates generated by the enormous axiological changes brought about by that historical moment, mainly in American society, but also throughout the world: including civil rights movements, the Vietnam war, the sexual revolution, student movements, feminist activism, etc. From the street to the journals’ columns and further to legislative debates, these topics entered into the structure of university curricula as a kind of higher-level approach to these civic and political topics on which the university was asked to offer its expertise. In its first form, applied ethics was an *application of ethical theories* and other philosophical concepts to these vital public issues. Simultaneously, under political pressure, in the context of post-war corrective policies and some abuses reported in American medical research, a process was underway of proposing and weighting different moral principles and other bioethical restrictions, mainly for the use of scientific research and medical practice (the *Belmont Report*, 1979). The moral principles and the ethical codes diffused in the business field were stimulated by the “social responsibility” movements. Step by step, centres of research on applied ethics were set up, within and outside universities, including those private firms which offered consultancies on this new field of research and the opportunity to carve out a new profession. In the last 30 years, *Corporate social responsibility* programmes (CSR) and “ethics management” structures (EM) have begun to attract ethicists and non-ethicists as well. This kind of activity invaded other fields (business, first of all) and other continents. Some criticized the lack of spectacular results; but this is due, perhaps, mainly to the rather unrefined early outputs of this pioneering research enterprise, a fact that we usually tend to forget.

This academic fashion spread in Europe, especially in British universities, and, much later, on the Continent. On the one hand, the French observed this new discipline initially with reserve and even with contempt, but eventually translated Anglo-American works and organized their own research groups. They “hardly

dared to call it ‘ethics’, since it was rather a form of rational casuistry separated from any kind of philosophical reflection” and since it apparently had *nothing to do* with “moral philosophy”.¹ Today, their judgement is no longer so severe. On the other hand, the Americans launched the four principles of Beauchamp and Childress;² as an answer, the Europeans also proposed four different principles (*Basic Ethical Principles in Bioethics and Biolaw*). Such a competition assured a certain dynamic to the nascent field and, finally, a portfolio of ethical principles was drawn up for use in various fields.

Over the years and in painstaking steps, research in applied ethics became more and more specialized, correlated to the clients’ needs and practiced mainly in research centres and private firms. Today *applied ethics* refers to a large variety of methods capable of critically examining and assessing the moral problems of various professions, technologies, public policies etc., including (amongst others) conceptual analysis, phenomenology, casuistry, narrativism, reflective equilibrium, specification, weighing of reasons, ethical audit, ethics management, ethical matrix etc. “Applied” does not refer mainly to the application of major ethical theories, but to a kind of free market in “ethical tools” and to some widely accepted ethical methodologies, used by ethicists or non-ethicists, decisively set apart from the ivory tower inhabited by traditional moral philosophers, in firms, universities, hospitals etc. New professions appeared, from ethics officer, to ethical consultant and ethical auditor. A kind of “ethical infrastructure”, able to embrace all these methodological developments and to endow them with a particular, precise sense, came to delineate and define the domain of the *new applied ethics* making it an intrinsic part of modern management in each organization.

During this slow, formative period, communist post-war Romania was completely oblivious to these political and intellectual movements. “Ethics” was certainly an academic discipline, but one embedded in the official ideology. This was a reason for its lack of appeal and its slow dynamics. Some of the great theoretical works in this field were translated (Plato, Aristotle, Spinoza, Kant etc.) and were taught in universities after 1970, but no detailed commentary was dedicated to them and even when eventually that was the case, the critical approach readily adopted the dominant Marxist perspective. The analytical moral philosophy of the time (meta-ethics) was manifesting itself through only *one* translation of the synthesis signed by Svetozar Stojanovici.³ The tendency was, therefore, to write monographs on authors or philosophic trends (Moore, Neo-Kantianism, ethical intuitionism, etc.). But the local literature on “applied ethics” was completely lacking. An explicit and free approach to “sensitive” political problems was prohibited.

As an academic discipline, “applied ethics” was inaugurated at several universities only after the anti-communist revolution of 1989. The first book of

1 M. Canto-Sperber, *La philosophie morale britannique*, PUF, Paris, 1994, p. 99.

2 T. Beauchamp, J. Childress, *Principles of Biomedical Ethics*, Oxford University Press, Oxford, 1979.

3 S. Stojanovici, *Meta-etica contemporană (Contemporary meta-ethics)*, Editura științifică, București, 1972.

readings (translated articles) appeared in 1995 together with the first courses.⁴ The topics followed those current in America even if they did not fit the Romanian realities. Later, some other books of this type were issued,⁵ but not so much on applied ethics as on theoretical moral philosophy.⁶ Several courses in ethics were introduced. For example, at the Faculty of Philosophy of the University of Bucharest there is a course in ethics in each year of study: *Introduction to ethics*, *Ethical theories*, *Applied ethics*, *Ethics management*. Various other courses are taught at masters and doctoral levels.

In parallel, some academic Romanian philosophers initiated research programmes in which ethics, both theoretical and applied, had a significant part. At Babeș-Bolyai University in Cluj-Napoca, Ion Copoeru, Mihaela Frunză, Imre Ungvári-Zrinyi and others integrated topics of applied ethics into their research, inspired mostly by phenomenology, Habermas's discourse ethics or gender studies.

Also, at the West University of Timisoara ethics courses in several specializations were introduced; some personal research projects on Kant's ethics were developed and the Doctoral School began to do some research in medical ethics.

At the University of Medicine of Iași (with the cooperation of local philosophers) the most active and visible centre of *bioethics* was set up under the direction of a professor of legal medicine, V. Astarastoaie. The work of this research group is remarkable both for their didactic and research⁷ achievements as well as for having launched the first *Romanian Journal of Bioethics* – an interdisciplinary publication. Similar activities took place at the Universities of Medicine of Bucuresti, Cluj, Timisoara and Sibiu. The impact on hospital ethics or on research ethics was, however, precarious. The overall estimations of the research level of Romanian bioethics vary from “remarkable” to “embryonic”.

At Bucharest University, Professor Adrian-Paul Iliescu started a programme of “economic and social ethics”, followed by an international one on “intergenerational ethics and sustainable development”.⁸ He is also an analyst of the post-communist

transition and some of its ethical problems. Professor Vasile Morar developed the field of business ethics and initiated research on topics such as media ethics, the ethics of terrorism and of the Holocaust.⁹ Together with D. Craciun and V. Macoviciuc from the Academy of Economic Studies, they issued a treatise on business ethics.¹⁰ Valentin Mureșan wrote the first book on *ethics management* focused on methods of moral decision-making.¹¹

The beginnings of applied ethics in Romania (1995) are significantly marked by an infusion of American topics into local curricula even if they do not completely fit: here I mean topics like abortion, homosexuality, euthanasia, animal rights or feminist ethics. Some of these flourished, others did not, because the contexts were and still are very different. What in America were hot topics in strenuous public debate, were not current in Romania. And the local hot topics (e.g. responsibility under communism, Ceausescu's trial, corruption, the ethical management of institutions etc.) remained practically untouched. The lack of political interest in such studies was also a characteristic of the period. Even more, the problems raised by intermediary paradigms such as principlism, narrativism, moral casuistry etc., remained outside the academic curricula.

In parallel, outside universities, mainly in business circles, some CSR debates and offices were set up – most of them under the political pressure of the European Commission. But this was not an ethics oriented trend, but a PR sub-program of study in the departments having this profile. The whole CSR program was captured by PR faculties and by specialists in law and economics, without any ethical training and without ethicists. In business and commerce, the new CSR officers were almost without exception graduates of the faculty of “public relations”. Only in the last six years some private firms engaged in ethics management and compliance were set up. Ten years ago a Research Center for Applied Ethics was inaugurated at the Faculty of Philosophy of Bucharest University which is now sufficiently equipped to offer consultancies outside the university. Such a cooperation took place, for example, with the Ministry of Research on building a new code of ethics. Some projects which involved ethical consultancy have been developed at Cluj University in the field of legal ethics by Professor Ion Copoeru.

A masters degree course on “ethics management” was initiated at Bucharest University. Initially met with scepticism, this course produced significant results: after four years, there are tens of graduates having a remarkable *know how* in ethics management, 10 doctoral students in this subject, many post-graduation theses, several professional works conducted by professors in secondary schools and an incipient local literature. At Cluj University, two masters degree programs in applied ethics have been successfully implemented, one in the Romanian language, the other

4 A. Miroiu (ed.), *Etica aplicată (Applied Ethics)*, Editura Alternative, București, 1995.

5 I. Copoeru, *Etica și cultura profesională (Ethics and Professional Culture)*, Casa Cărții de Știință, Cluj-Napoca, 2008.

6 At the University of Bucharest, Valentin Mureșan translated the works of J. S. Mill, I. Kant, B. O. A. Williams, R. M. Hare, H. Prichard, G. Anscombe etc. He published a book of readings with A. Montefiore, *British Moral Philosophy*, Alternative, București, 1998. He also initiated a program (and four courses) through which four commentaries were conceived on Plato's *Republic*, the *Nicomachean Ethics*, the *Groundwork* and *Utilitarianism*. He also published in English a collection of ethical essays, *From Eudaimonia to Happiness*, University of Bucharest Press, Bucharest, 2010, and his commentary to *Utilitarianism* (Lambert Academic Publishing, Saarbrücken, Germany, 2010). A doctoral thesis on *Nationalization in Romania*, written by Emanuel Socaciu established the status of applied ethics.

7 G. Scripcaru, V. Astarastoaie, C. Scripcaru, *Principii de bioetică, deontologie și drept medical (Principles of bioethics, deontology and medical law)*; V. Astarastoaie et alia, *Essentialia în bioetică (Essentialia in bioethics)*, G. Gavrilovici, *Introducere în bioetică (Introduction to bioethics)*, 2007. And many others.

8 Adrian-Paul Iliescu, *Etică socială și politică (Social and Political Ethics)*, Ars Docendi,

București, 2007. A big international conference on intergenerational ethics, financed by The European Science Foundation, took place within this programme in Bucharest in 2011.

9 V. Morar, *Etica (Ethics. The Philosophy of Good and the Moral Science)*, Paideia, București, 1996.

10 D. Crăciun, V. Morar, V. Macoviciuc, (eds.), *Etica afacerilor (Business Ethics)*, Paideia, București, 2005.

11 V. Muresan, *Managementul eticii în organizații (Ethics management in organizations)*, Editura Universității București, 2009.

in Hungarian.

This was a sign that “applied ethics” had already begun to diversify, following the international trend of the times, including a variety of methods of ethical assessment, a movement towards specialized ethics centres and towards contractual work with external clients. In the absence of adequate legislation, contracts with external stakeholders are, unfortunately, very rare, the dominant mentality being that in ethical problems everybody is an expert and that no special expertise, professional programs or supporting organizational structures are needed. However, an objective trend in the opposite direction is also manifest; some private firms on ethics management and ethics consultancy have been organized.

From the point of view of ethics management, the institutional situation is the following. Most parts of organizations have an ethical code, called usually a “code of conduct”, just to avoid the inconveniences raised by a new set of restrictions and by the obligation to take into account the interests of all the stakeholders on an equal footing. By ministerial decrees ethics committees were set up, but they were conceived as litigation committees not as competent forums to debate and launch the *ethical programs* of the organization nor to update the ethical code. There are only very rare ethical trainings, no ethical hotline, no moral consultancy, no ethical audit nor even intra-institutional applied ethical debates. In short, the lack of a coherent political vision and will did not encourage institutional ethics. The naive point of view that at the workplace, morals is something within our general comprehension and a subject that everyone knows, remains dominant. The exception is represented by foreign companies which brought in their own ethics management. There are some paradoxes: employees, in general, believe that we need specialists in the administration of ethics but, on the other hand, the great majority of organizations have not hired ethical experts and are reluctant to set up an ethics office and allocate a budget.

However, empirical research shows that most people are dissatisfied with these fragmented and partially developed forms of applied ethics and wish that something would be done about it. Thus, there is a majority which holds a positive attitude towards institutional ethics and is hoping that, when the time comes, there will be a serious improvement in this regard. Till then, the ethicists keep preparing their tools and the moral philosophers continue their research in their ivory towers without taking into account the obsessive question of the layperson: “What’s the usefulness of all that?”

1. Moral Philosophy



What does “Metaphysics” mean in Kant’s *Groundwork of the Metaphysics of Morals*?

Ilie PARVU

“Since the universality of the law according to which effects happen constitutes what is properly called *nature* in the more general sense (according to its form), i.e. the existence of things in so far as it is determined according to universal laws, the universal imperative of duty could also be expressed as follows: *so act as if the maxim of your action were to become by your will a universal law of nature*”. (Kant, *Groundwork*, 4: 421)

“Since the validity of the will, as universal law for possible actions, has an analogy with the universal connection of the existence of things according to universal laws, with which what is formal in nature as such, the categorical imperative can also be expressed as follows: *act according to maxims that can at the same time have as their object themselves as universal laws of nature*. Such, then is the formula of an absolutely good will”. (Kant, *Groundwork*, 4: 437)

In the last years a central theme in the interpretation of Kant’s moral philosophy, at the general theoretical level, has become the confrontation between two different construals of its fundamentals, namely, “realism” (or metaphysical, ontological interpretation) and “anti-realism” (or “constructivist” – better “constructional”, “procedural” interpretation).¹ This paper intends to further develop the first kind of interpretation by replacing the entire discussion into a larger historical context and by taking into account new elements which can have determinative signification for the understanding of foundational claims and ontological commitments of Kant’s moral theory.

Eminently represented by E. Cassirer (for theoretical philosophy), H. Cohen (for Kantian ethics), or G. Martin and G. Prauss (for fundamentals of transcendental philosophy in general), the metaphysical interpretation was adumbrated by logical empiricists and their followers (like E. Nagel and H. Putnam), contested by all sorts of “analytical Kantianism” (the main form of this contestation addressed the so-called “two-worlds” interpretation of the distinction between phenomena and things-

in-themselves which was substituted by the “two-standpoints” approach of the Kantian distinction), eliminated by the “disciplinary” reduction to ethics of Kant’s moral philosophy, and eventually substituted by the “dominant paradigm” of the reconstructionist approach. In the last years we can notice a partial renaissance of the ontological interpretation of Kant’s first *Critique* (not in the sense advocated earlier by Heidegger, who is not interested in the “immanent” or structural ontology of Kant’s program but tries to articulate a possible metaphysical precondition of the entire Kantian thinking), in which the meaning of the transcendental idealism is completely reconsidered and the “two-worlds” interpretation of the fundamental distinction between phenomena and things in itself is integrated in a new kind of understanding of this relation on the basis of a new theory, so-called “Grounding theory” (in which the grounding relation between things in itself and appearances can be a metaphysical ground for moral liberty).² Other important developments of an ontological approach of Kant’s transcendental idealism were proposed by R. Langton, P. Abela, and K. Ameriks.

This interpretative movement towards a “realistic” interpretation of Kant’s general program also affected moral philosophy. I think that for those who are not “dedicated Rawlsians” this new realistic construal deserves more attention even if it cannot be considered the uniquely “faithful” interpretation of the fundamentals of Kantian moral theory. For some scholars, the “new metaphysical reading” of Kant’s moral theory makes possible the establishment of a “synoptic vision” in the interpretation of his conception, which shares unity at the fundamental level of the entire critical program (Lipscom & Krueger). The need to return to a more comprehensive perspective is motivated by the propensity to respond to the dominant, “positivist” interpretation of Kant’s *Critiques*, as was portrayed, for example, by Fr. Beiser: “Since the 1960s there has been a movement afoot in the Anglophone world to purge Kant’s philosophy of all metaphysics, to make Kant sanitary for a more positivistic age”.³

The constructional type of anti-realist position (J. Rawls, O. O’Neill, C. Korsgaard, J. B. Schneewind et al.) denies any fundamental significance of the ontological or metaphysical commitments or presuppositions of Kant’s theory of practical rationality and morality. In a very synthetic but expressive manner this interpretation was presented by Kain in the following terms:

“Within Kant’s system, [...] the supreme principle of morality is a cognitive claim that might possess objective validity (thereby distinguishing Kant’s position from non-cognitivist anti-realism and cognitivist error theories), but its validity is fundamentally ‘stance dependent’ or dependent upon our beliefs, conceptions, or constructive activity and is free of genuine ontological commitments”.

In contradistinction, according to the realist construal,

1 For very informed surveys of this dispute see: P. Kain, “Realism and Anti-Realism in Kant’s Second Critique”, *Philosophy Compass*, 2006, 1/5: 449-465; E. Watkins, *Kant and the Metaphysics of Causality*, Cambridge, Cambridge Univ. Press. 2005; E. Watkins, W. FitzPatrick, “O’Neil and Korsgaard on the Constitution of Normativity, The Journal of Value Inquiry, 2002, 349-67; B.J.B. Liscomb and J.Kruger *Kant’s Moral Metaphysics*, Berlin, De Gruyter. 2010; P. Formosa, “Is Kant a Moral Constructivist or a Moral Realist?” in *European Journal of Philosophy*, 2011, 1-27.

2 E. Watkins, 2005.

3 Beiser 2006: 589, *apud* Krueger & Lipscom 2010: 2-3.

“Kant’s moral philosophy should be understood as a form of realism because the moral law purports to be valid for every free rational agent, independently of its beliefs, conceptions, and activity, and purports to involve robust ontological presuppositions such as reality of ‘transcendental freedom’, God and immortality”. (P. Kain, 2006: 449)

My perspective on this foundational debate will not be articulated in this paper on the basis of an extended analytic research of the anti-realist position,⁴ but rather indirectly, through an attempt to reveal the weakness of two important claims of this interpretation which contest the validity of the realist interpretation on the basis that: (i) it entails an “extravagant metaphysics” and, (ii) in general, it is not consistent with the overall outlook of modern science. The first point consists merely in a reiteration of an old anti-metaphysical stance of some representatives of logical empiricism, and the second, if the theoretical construction of modern science is properly understood and reconstructed, proves to be straightforwardly false. In my opinion, positively expressed but in a very condensed form, the main support for the realist construal of the fundamentals of Kantian moral philosophy consists in its coherence with the ontological foundations of modern science and with the determinative structure of the entire Kantian program in transcendental philosophy (as expressed by the nuclear theory containing categories and principles); this perspective can also be justified by a rational reconstruction which intends to make evident the internal structure and epistemological status of this type of Kantian moral theorizing.

In the perspective of this reconstruction it is essential to consider the manner in which the (structural) laws function in the entire Kantian system as constitutive/determinative not only for particular elements or components of the critical, “immanent” ontology, but also for the very idea of the world taken in its integrality and full extension (including not only the natural world but also, as a “second nature”, the moral world). One important contribution in this direction is represented by the minute analysis of the determinative function of the idea of law for the deduction of the objective reality of categories and for the reality of the transcendental freedom.⁵ The generalized law-constitutive approach,⁶ based on

4 For such analyses see: K. Ameriks, *Interpreting Kant’s Critiques*, Oxford, Oxford Univ. Press, 2003; P. Kain 2006, C. Voeller 2001, *The Metaphysics of the Moral Law. Kant’s Deduction of Freedom*, New York & London, Garland Pb. Inc; E. Watkins & W. FitzPatrick. “O’Neill and Korsgaard on the Construction of Normativity”, in *The Journal of Value Inquiry*, 2002, 36: 349-367.; A.W.Wood. *Kant’s Ethical Thought*, Cambridge, Cambridge Univ. Press, 1999. R. Langton. “Objective and Unconditioned Value”, *Philosophical Review*, 2007, 116: 157-185.

5 C. Voeller, 2001 and for the detailed examination of Kant’s concept of a universal law of nature and of its interest for Kant’s moral epistemology and moral ontology see J. Scheuermann, “Universal Laws of Nature in Kant’s Moral Philosophy”, *Archiv fuer Geschichte der Philosophie*, 198769: 269-302.

6 The terminology of “law-constitutive approach” was employed by C. Voeller, 2001 - for Kantian metaphysics in general and for Kantian proof of the reality of freedom, in particular, and was used in another context, in the analysis of Newton’s metaphysics, by

a structuralist construal of scientific laws can constitute, in our opinion, the most profound basis for the unity of the entire Kantian system and of its consistency with the fundamentals of modern science. This Kantian law-approach in theoretical and moral philosophy (and, as was amply demonstrated by J. Scheuermann, for the theory of reflective judgement) is not only a common trait of the scientific and philosophic constructions from the so-called “theoretical modernity” (exemplary illustrated by Newton’s *Principia* and Kant’s first *Critique*), but it is also characteristic, *mutatis mutandis*, of the main abstract contemporary theories of science, the structural-abstract theories. And this kind of theories can determine, by rational reconstruction, the essential type of Kantian theorizing in all domains of its transcendental program.

On the other hand, the structural interpretation of the Kantian idea of law can offer some elements for the theoretical reconstruction and partial justification of “procedural” interpretation, for example, of its emphasis on human action and on its conditions of rationality.

The development’s phases of the interpretation of Kant’s moral philosophy sketched above correspond with the three movements in the interpretation of Kantian philosophy in general, presented by Ameriks⁷ as three “waves of interpretation”: the first, represented by the theoretical reconstructions of Kantian philosophy in the works of H. Cohen, P. Natorp and E. Cassirer, or by the commentaries of H.J. Paton or N. Kemp Smith, offered “extensive synoptic treatments”, historically grounded and comprehensively conceived. In the second wave of interpretation, represented by the works of eminent analytic philosophers such as W. Sellars, P.F. Strawson, J. Bennett et al., the interpretation emphasised “the critical reconstruction of arguments that were sometimes connected only loosely to the original text but very effectively engaged central issues in contemporary analytic philosophy”. Focused on “rigour and current issues”, this interpretation “came with the cost of leaving most of the original context of Kant’s work out of sight”. The third wave, represented by H. Allison, P. Guyer, D. Henrich, G. Prauss, “has the special merit of combining the historical concerns of the nineteenth century with the demands for clarity and relevance raised in the twentieth century”. But what is missing from this new wave of interpretation, in Ameriks’s view, is the “vision of the whole Kantian corpus characteristic of the first wave”.⁸

This vision of the whole cannot be obtained, in my opinion, merely by extending the scope of the direct commentaries of Kant’s works, or by reintegrating the historical dimension in the rational reconstructions of analytic philosophers. This global and synoptic kind of interpretation can be obtained only by a new kind of rational reconstruction of Kantian philosophy, a “theoretical reconstruction” which aims to bring into prominence the general type of Kantian theories and of the subjacent structure of the entire transcendental program. This new kind

K. Brading, “Newton’s law-constitutive approach to bodies: A response to Descartes”, in Janiak, Andrew, Erich Schlisser (eds.), *Interpreting Newton: Critical Essays*, Cambridge, Cambridge Univ. Press, 2012.

7 In his *Interpreting Kant’s Critiques*, 2003.

8 K. Ameriks, 2003: 2-4.

of rational (re)construction, a very common procedure in science, was applied in the context of philosophical theories in the case of Kant's first *Critique*.⁹ This kind of reconstruction is not a direct commentary of Kantian's work or a logical reconstruction with new conceptual instruments of Kantian theory or of its inferential structure.¹⁰ It aims to present the "theoretical form" of the "new science" of the *Critique of Pure Reason*, to reconstruct its underlying structure as a special instance of a more general type of theory construction, and eventually to justify its epistemological status and value. This kind of reconstruction can make explicit the metaphysical foundations of the Kantian-type of theorization, which underlies its entire general transcendental program and can offer a legitimation basis for their unity and internal consistency.

This type of reconstruction was extended to Kant's ethical theory;¹¹ it can be applied with minor adjustments to all theories of practical reason and of reflective judgement. In the debate between realists and constructivists the usual strategic procedures consist either in the analysis of Kant's arguments (with special emphasis on the justification of the Categorical Imperative in *Grundwork* III), or in the choice of one or another from the formulas of Categorical Imperative as the genuine "exponent" of Kant's position, for example, the formula of humanity for realist readings, and formulas of universal laws and of kingdom of ends, for constructivists.¹² But these strategies are obviously inconclusive. Neither reading of this kind can be decisive. In order to overcome this alternative we must reformulate the problem at a higher level of abstraction by introducing a new conceptual frame for the analysis of the metaphysical groundings of moral philosophy.

My constructive proposal, in a preliminary statement, is to understand metaphysical commitments of Kant's moral philosophy starting from a reconstruction of his theory of practical reason in the abstract framework of the structuralist metatheory of science and to elucidate in this manner the "world-project" of the nuclear theory of Kant's program as determined by the matrix of its fundamental laws (i.e., the moral law with its main "dimensions" expressed by the "structural formulas" of the Categorical Imperative: Formula of Universal Law, Formula of Autonomy and the Formula of Humanity). This law (the moral law) as determinative structure ("transcendental form" in Kant's terminology) represents in its integral expression the genuine "exponent" of Kantian general metaphysics of moral philosophy, determined by the "scientific form" (its form "as a science") of these type of theories. This kind of general metaphysics or ontology represents a world-construction, a "constitution" of a fundamental and determinative realm. In this sense, the ontology of Kant's moral philosophy, as a grounding metaphysics, has

no such objectives as to make explicit the ontological commitments of "regimented" theories (reconstructed as formal theories in first-order logic, as in Quine's ontology), or to expose the possible referents of ethical statements (as in analytical meta-ethics). Rather, its main task is to "find the exponents" (*exponieren*) of the moral "phenomena" as their determinative laws and grounds. The moral ontology, determined by the structural formulas of the Categorical Imperative as a grounding metaphysics has an analogue function with the Analogies of Experience, the "transcendental laws of nature" of the first *Critique*, namely, to "really exhibit the unity of nature in the combination of all appearances under certain exponents".¹³

In the philosophical interpretation or reconstruction of Kant's ethics we can find many important studies in which the metaphysical dimension of his moral theorizing was underlined in various degrees and was argued using different rational techniques or different interpretive schemes, mainly determined by particular philosophical aims. I will present in the following part of my study some important proposals in this direction, most of them neglected in contemporary Kantian secondary literature, which is dominated by the analytic repudiation of the ontological dimension of ethics (as exemplarily expressed in Putnam's *Ethics without metaphysics*). The first philosopher who tried to make explicit the ontological significance of Kant's metaphysical foundation of ethics, as a part of a grandiose reconstruction of Kantian transcendental program (*die Wiederherstellung der Kantischen Philosophie*) was Hermann Cohen. He argued for the idea of an "ethical reality" as a possibility condition for the objectivity of moral judgements. In his metaphysical foundation of moral theory Cohen tried to imitate the two different procedures of Kant's justification of the transcendental theory-core of theoretical philosophy, presented as proceeding according to a "synthetic method" in the first *Critique* and as following an "analytic method" in *Prolegomena*. In his first attempt to reconstruct Kant's metaphysical foundations of moral philosophy (in *Kants Begründung der Ethik*, 1877) Cohen argued that by transcendental reflection on the idea of a pure will one can determine the possibility conditions for establishing the objective reality of moral concepts, and of the objectivity of moral judgements. In a second approach, (in *Ethik der reinen Willens*, 1904), the reconstruction proceeds, as in the *Prolegomena* formulation of the transcendental theory, from a "fact of science" (not as in the second Kantian *Critique*, from the "fact of reason"), but this time the *Faktum der Wissenschaft* cannot be the accepted classical mathematics and the "pure natural science" (with their objective and universally valid statements), but a "social science of humanity", namely, "the science of jurisprudence", a "formal science" of human action, the science of "universal laws of human action"; this theory can be accepted as a "fact of science", as the "given" for transcendental "regressive" determination (and justification) of the general foundations of every human action and rule of behaviour. By transcendental analysis of this "given science", we can ascend to the essential features of the moral laws, at their determinative function for "ethical reality". This transcendental-metaphysical foundation of ethics is mandatory if ethics tries to remain a "philosophical discipline", and its main task as a philosophical theory (its "scientific theme", *die Aufgabe*) is to demonstrate the validity of moral

9 I. Parvu, *The Possibility of Experience. A Theoretical Reconstruction of Kant's Critique of Pure Reason* (In Romanian) Bucharest, Politeia SNSPA, 2004.

10 As was realized in many studies by H. Scholz, J. Hintikka, W. Stregmueller, M. Friedman, a. o.

11 V. Muresan, Commentary to Kant's Groundwork for the Metaphysics of Morals (in Romanian), in Immanuel Kant, *Intemeierea metafizicii moravurilor*; Bucuresti, Humanitas, 2006.

12 See P. Formosa, "Is Kant a Moral Constructivist or a Moral Realist?" in *European Journal of Philosophy*, 2011: 1-27.

13 *Critique of Pure Reason*: A 216-B 263.

judgements and, correlatively, the possibility of “another kind of reality”.¹⁴ That is the reason why Kant was, since Plato, the first who has properly determined the “theme of ethics”. For Kant, as for Plato, every attempt to rebuild the foundations of ethics must give a solution to the “ontological *Aufgabe*”, of the possibility of an “ethical reality”. This is a necessary condition for the possibility of ethics as a genuine science.

A very important contribution (but also quasi-generally ignored even by the “friends” of a realist construal of Kant’s moral philosophy) is to be found, in my opinion, in the study “*The metaphysical aspect of Kant’s moral philosophy*” of the American philosopher Robert E. Gahringer, published in *Ethics* in 1954, as an extended version of a very short paper, “*Moral Law*” (1953), and followed by another study, “*The Foundation of Necessity in Practical Reason*” (1962). The general thesis of his perspective is that the contemporary “general lack of respect for the metaphysical aspect of Kant’s reorientation in thought” is partly “responsible for the common failure to appreciate the power of his moral philosophy. His central points – his conception of a single moral law, his formalism, and the parallel between the *Critiques* – are generally condemned, and we find no interest in the conceptions essential to his argument – the form of the will, the principles of self-criticism, the metaphysics of Freedom. Kant is left with no point and no argument”.¹⁵ Gahringer’s conception deserves an analytical commentary, but for the moment it is important to present only some of its main theses. In the first place, Gahringer accepts the distinction between appearances and things-in-themselves as an ontological one, which is reformulated from the viewpoint of practical reason as a distinction between “two regions of reality”, or two-worlds, the phenomenal and the moral world, both being distinguished and determined “as worlds” by their “characteristic kinds of lawfulness”, the law of nature on the one hand and the moral principles on the other hand. But, and this is a very significant idea, the “metaphysical commitments” of Kant’s theories are not determined by their “particular” laws, but only by the “a priori laws and principles of two type of lawfulness definitive of two regions of reality”.¹⁶ In other words, what is determinative for the “theoretical constitution” of a natural or moral world is essentially the “a priori formal laws” or the “formal Principle of principles” (the moral law). Only these structural expressions of lawfulness can be accepted as “genuinely constitutive of their respective regions of reality”, only at this level can we determine the “metaphysical condition”, noetic and ontological at the same time, for these two realms of reality. By having stressed the world-constitutive role of the natural and moral laws, Kant, in Gahringer’s opinion, had succeeded in reinterpreting “the old doctrine of essence in terms of the modern doctrine of law” and in his modality he at once “overcomes the dogmatism of the old attempt to ground ethics in some occult and dogmatic essence of the human and preserve the notion of intrinsic principle”.¹⁷

14 Hermann Cohen, *Kants Begründung der Ethik*, Berlin, Dummlers Vg. 1887: 4.

15 R. Gahringer, “The Metaphysical aspect of Kant’s Moral Philosophy”, *Ethics*, 64, 4: 1954: 277.

16 Ibid.

17 Ibid., 278.

The “region of Freedom then is a noetic and ontological identity” and this quality of structural lawfulness can unify the function of a moral principle in the “realization of Freedom” and its moral quality. This moral quality is defined metaphysically, i.e. in terms of the “actuality of some region of being”. In the case of Freedom, it is then possible to define “the moral character of an immediate principle in terms of its ontological function”. This connection between moral goodness and freedom, basically presented as a formal-structural understanding of the moral principles substantiates Kant’s claim that the Categorical Imperative (CI) represents “the a priori form of any finite principle”.¹⁸ In this perspective of the “formal laws of morality”, CI is not “an immediate principle but the form by which particular principles make categorical demands”. It is a “constitutional law, the form of the constitutive relation of particular principles to particular wills”. In this way it is the formal condition of the moral world, “the formal condition of the self as objective end”.¹⁹ In this perspective Gahringer reinterprets the meanings and functions of all “formulas” (“formulations”) of the CI as law-constitutive aspects or dimensions of the “form of Freedom”. In the same structural manner in which Kant had expressed in his first *Critique* the totality of the “categorical moments” in a single unified and holistic formula, Gahringer proposes to compress in a unique structural-formula all the different expressions of CI, of the formal principle of the will.²⁰ This analogy is founded on the fact that “principles or maxims have been allowed to appear much as if they were forms, giving structure to acts or wills in the same way that empirical concepts determine phenomenal objects”.²¹ In this way the principle or maxim gives “a new kind of structure to behavior and desire which establishes them in the region of Freedom as act and will”.²² All these traits of moral laws or of principles of morality are signs of an abstract systematic theory (having its proper consistency conditions, termed by Gahringer “transcendental consistency”), which can be correlated with concrete moral actions only by a long and extremely complicated mediating reflection. This was, in Gahringer’s opinion, not the explicit aim of Kant’s *Foundations*. Rather, his main intention was to build a “world of morality” as a “moral universe, an intelligible whole, in which being right is essentially connected with being rational”.²³

Gahringer’s conclusion is that Kant’s ethics was erected on the basis of a “formal” theory defined by structural constraints with determinative ontological functions and power. In this sense the “formal” concepts of morality, “by virtue of their role in thought [...] provide structure for one region of being” (Gahringer 1962: 41). At the same time, one of the most important aspects of Kant’s moral philosophy explained in this perspective is its consistency (based on the same “law-constitutive view of the world”) with the general outlook of modern science.

Special kinds of contributions to the development of a metaphysical

18 Ibid., 280.

19 Ibid., 282.

20 Ibid., 284.

21 Ibid., 284-285.

22 Ibid., 285.

23 R. Gahringer, 1962: 25.

(ontological) perspective on Kant's moral theorizing are made by some philosophers primarily interested in the constitutive function of laws and of the moral laws in particular, expressed by their "formal" nature. The Kantian technical term of "form" is intended to express the essential determinative function of the general laws as structural cores of the abstract theories. In this direction the analysis of the ontological function of the formal (a priori) laws was extended by Scheuermann with the idea of a universal law of a "system of nature" from the perspective of the teleological judgement. And in this enlarged context we can understand why "the concept of nature as a teleological system of reciprocal causality is an adequate model for the Categorical Imperative as a principle of moral action",²⁴ or the fact that "the formal structure of natural teleology is not merely analogous to that of universal law of freedom. It is the same in both cases: only the subjects of these laws differ".²⁵ This unity or structural analogy gives us the possibility to better understand the internal coherence of all formulas of CI, "modeled on this teleological concept of nature", and the special, irreducible status and function of the "supreme" principle of morality.

Much more known and widely discussed are the contributions to the understanding of Kant's metaphysical foundation of moral philosophy presented in the works of some contemporary prominent Kantian scholars like E. Watkins, K. Ameriks, A. Wood, R. Langton, C. Voeller, P. Kain a.o. In recent years, much commented on is Watkins's reconstruction of the Kantian idea of causality in terms of "natural powers", an interpretive perspective that can contribute to a unified understanding of natural and "moral" causation. In this way we can understand the profound analogy between the second analogy of experience and the formula of autonomy of CI as a new type of "causality from liberty".²⁶ Very important, it seems to me, are the attempts made by Carol Voeller to demonstrate the fundamental constitutive function of laws in the entire Kantian program, from the transcendental deduction of categories to the "deduction of the moral law" in the last section of the *Groundwork*.²⁷ This, again, can explain not only the internal unity of Kant's transcendental program on the basis on a "strategic unit" of the constructive and argumentative structure but also its "external" consistency with the general foundations of modern science. As a last significant contribution to a better understanding of the ontological foundation of Kant's moral philosophy I can only indicate the new approach formulated by Rosenkoether as a "referential reading of Kant's practical project, according to which the maxims are made morally permissible by their correspondence to objects, though not the ontic objects of Kant's theoretical project but deontic objects (what ought to be)".²⁸

All such special analyses and elucidations of some central issues of Kant's metaphysical foundation of moral philosophy must be completed and integrated

into a new kind of research which tries to uncover the ontological commitments of moral theories by an ascent to a higher level of abstraction, for which the object of investigation is represented not by the Kantian works (or "discourses", texts or statements), or by specific Kantian theories, but rather by the theory-types, extensionally defined by some classes of theories with the same structural properties and having similar functions or relations with experience and reality.

As I have tried to formulate these things in another paper,²⁹ the theoretical form of the entire system of Kant's practical philosophy can be reconstructed as a fundamental theoretical program consisting in the following levels: (1) a basic theory, representing the determinative matrix of the program, the topos of fundamental and foundational research; (2) a "mediating theory" (a set of interconnected theories previously accepted, of models, hypotheses, methodological rules, etc.) which "constructively extend" the basic theory and make possible the various specializations; (3) a family of particular theories, or special laws, interrelated by general constraints, with determinate objects or domains of application, corresponding to particular forms of human experience or action. Kant's theoretical system of moral philosophy is an architectonic construction articulated in conformity with the "formal" constraints of the "categorical moments" ("moments of architectonic unity", the essential rules which guarantee the objective reference of the conceptual abstract representations), established by the first Critique. This system represents a modular organization of theories (theory-elements); the integral order of this complex system is determined by the "original unity of freedom", the analogue for practical reason of the famous "transcendental unity of apperception", and by the formal principle of morality, a "principle of principles".

The most important aspect of this presentation of Kant's idea of a scientific form of practical philosophy refers to the theory-type corresponding to the basic theory of the program. It is a "formal" theory in the abstract-structural sense, a "possibility theory", without a determinate domain of reference and truth, but with many different possible models and paradigmatic exemplars. It is defined by a universal formal structure and a multiplicity of different possible ways of "theoretic articulation" of that fundamental structure, or the "unfolding" of an abstract and universal categorial matrix. The main structural constraints of this theory represent at the same time the fundamental expressions of the basic law; or, put in another way, the basic theory is defined primarily by its matrix of structural laws, the ground and the source of all lawfulness.

As with any abstract-structural theory, the theoretical core of Kant's program in practical philosophy admits alternative generic interpretations, different formulations (analytic or synthetic "representations") and many types of "theoretical articulation" (for example, the deductive-axiomatic *Darstellung*, of the second Critique).

Starting from this general reconstruction's pattern (or interpretive framework) we can consider that the basic theory of Kant's practical philosophy, as introduced in the *Groundwork* in a synthetic presentation, is constituted by the following net of the theory-elements or modules: (i) the first module represented by a singleton, the "supreme" principle of morality: a formal principle, a "principle of principles"

24 J.Scheuermann 1987: 290.

25 Ibid., 292.

26 See E. Watkins, 2005.

27 C. Voeller 2001.

28 T. Rosenkoether, "Kant on Construction, Apriority, and the Moral Relevance of Universalization", *British Journal for the History of Philosophy*, 6: 2011: 1143.

29 I. Parvu, *Metaphysical Foundation of Morality*. 2012, *forthcoming*.

which constrains the form of all theoretical developments, having a regulative function analogue, for example, with the function of the general principle of relativity or the condition of general covariance for relativistic theories in physics, or with the “general principle of description theories”, introduced by Russell in his famous *On Denoting* from 1905; (ii) the module of the categorial scheme; this module is explicitly introduced only in the second, analytic representation’s form of the basic theory of the *Critique of practical reason*; in *Groundwork* it is substituted by the general categorial “moments” acting as constraints for the determination of the most important formulas of CI; (iii) the module of the structural formulas of the CI, expressing the main “dimensions” of the moral law; this structural-determinative law is essentially involved as a possibility condition in the constitution of the objectivity of moral judgement and in the determination of the “real possibility” of the freedom and free will. This module defines the ontological project of the entire practical philosophy; (iv) the set of the “application formulas” of CI, or the formulas-schemes, an important class of application principles; (v) a special module containing only the Law of Nature Formula of CI, by which the structural moral laws are determined as “Analogies of moral experience”; at the same time this formula has an irreducible regulative role for the successive construction of the domains of practical reason.

This very abstract and schematic representation of the basic structure of the Kantian program in practical philosophy enables us to formulate as a “working hypothesis” the following interpretation of the meaning of Kant’s “metaphysics” of moral philosophy: it represents an ontological project of the transcendental construction of morality, an ontology defined in analogy with the first *Critique* along the following lines: (a) it is an immanent or internal ontology, or as Kant himself said, an “immanent thinking”; this means that the ontological horizon of the basic theory is not constituted by some “external” commitments, as in the case of Quine’s ontology, or as truth-makers for some linguistic expressions, or as “facts” designated by moral sentences (as in analytical meta-ethics); it is rather constituted as a “structural model of being” by the formal conditions of the moral law as structural law; this “formal project of being” is not a derivative result or an external adjunction to the determinative form of the basic theory, justified by some *sui generis* philosophical arguments, it is essentially an internal component of the theory-core as its ontological internal dimension, with determinative functions for all subordinate levels of theory construction; the structural laws of the basic theory represent not only the generative nucleus of all theoretic developments; they represent at the same time, as structural-determinative “forms”, the general internal model of existence in its structural determination; (b) this ontological project of moral philosophy is essentially a world-construction, the projection of an organized and internally determined whole; (c) this moral world is a law-constituted world, a world determined by structural laws (the structural formulas of the CI: the formula of universal law, the formula of autonomy and the formula of humanity); this idea can be understood as a generalization at the level of an integral world of the Newtonian conception of law-constitutive approach in the definition of the properties of physical objects (as presented by Brading 2012); the fact that Kant introduces for this function exactly those formulas of CI which are strictly

analogous with the fundamental principles (axioms of laws of motion) of Newtonian rational mechanics (mediated by the similar Analogies of Experience defined by the *Critique of Pure Reason*) is the most important evidence for this hypothesis; when Kant speaks about a “world”, he speaks of its constitution by causality, reciprocity and permanent substratum;³⁰ (d) this new ontological model is obtained by a sort of “rational generalization” of the natural world (Kant speaks explicitly of an “extension of the theoretical reason”); this is a special kind of “extension”, characteristic of transcendental philosophy, an extension by which an ideal prolongation of a “natural” realm becomes its very determinative structure, its grounding level as a possibility condition; (e) being a world constituted by structural laws, this ontology defines at the same time a fundamental, grounding level; in this sense it can be integrated in the so-called “grounding metaphysics”, an ontology not only “posed” by the ontological commitments of the statements of a formalized theory, but an ontology defined by the “ontological principle” (Whitehead), which demands to conceive something as existent only if its existence is grounded in some determinative law, in a level of reality or a generative structure. In this sense the Kantian moral ontology presupposes a deep meaning of reality or existence, a reality “posed” as a fundamental ground.

I must concede this is only an abstract model for the ontological component of the structural theory of Kant’s moral philosophy; it is a representation at the level of a “general algebra” of the fundamental “moments” of the structural determination of a moral reality. It is a theoretical construct, a “doctrinal function” which must be instantiated in concrete modalities in order to become a determinate theory. This abstract frame can have an important explicative power and exactly this explanatory power represents its adequacy condition.

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30 Z. Vendler, “On the Possibility of Possible Worlds”, *Canadian Journal of Philosophy*, 1975, V. 1: 61.

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Kant's Highest Political Good¹

Sorin BAIASU

Introduction²

The idea of the highest political good is introduced by Kant in the *Metaphysics of Morals*, more exactly in the Doctrine of Right, in the Conclusion to Chapter III, Cosmopolitan Right:

"But if it [the idea that the best constitution is that in which power belongs to the laws, not to human beings] is attempted and carried out by gradual reform

- 1 An early version of this paper was presented to the Workshop on Perpetual Peace, organised by Harry Lesser in September 2011 at the University of St Andrews. I am grateful to the organiser for the invitation, to Adrian Piper, for extensive comments and discussion, and to participants to the workshop for their questions, in particular to Peter Niesen, Lucas Thorpe and Alice Pinheiro-Walla. The finishing touches to this text were put while a Guest Research Professor at the University of Vienna, as part of the ERC Advanced Project "Distortions of Normativity"; I am grateful to the project's PI and to Keele University for making this possible.
 - 2 In citing Kant's works the following abbreviations are used:
CPR: *Critique of Pure Reason (Kritik der reinen Vernunft)* (1781; 1787), in *Kant Critique of Pure Reason*. Tr. Werner S. Pluhar. 1996a, Hackett.
GMM: *Groundwork of the Metaphysics of Morals (Grundlegung zur Metaphysik der Sitten)* (1785), in *Kant Practical Philosophy*. Tr. and ed. Mary J. Gregor. 1996b, Cambridge University Press, 43-108.
CPrR: *Critique of Practical Reason (Kritik der praktischen Vernunft)* (1788), in *Kant Practical Philosophy*. Tr. and ed. Mary J. Gregor. 1996b, Cambridge University Press, 137-271.
CJ: *Critique of Judgement (Kritik der Urteilkraft)* (1790), in *Kant Critique of Judgement*. Tr. W. S. Pluhar. 1987, Hackett.
PP: *Toward Perpetual Peace (Zum ewigen Frieden)* (1795), in *Kant Practical Philosophy*. Tr. and ed. Mary J. Gregor. 1996b, Cambridge University Press, 311-52.
MM: *The Metaphysics of Morals (Die Metaphysik der Sitten)*, comprising the *Metaphysical First Principles of the Doctrine of Right (Metaphysische Anfangsgründe der Rechtslehre)* (1797) and the *Metaphysical First Principles of the Doctrine of Virtue (Metaphysische Anfangsgründe der Tugendlehre)* (1797), in *Kant Practical Philosophy*. Tr. and ed. Mary J. Gregor. 1996b, Cambridge University Press, 353-603.
Anth: *Anthropology from a Pragmatic Point of View (Anthropologie in pragmatischer Hinsicht)*, in *Kant Anthropology from a Pragmatic Point of View*. Tr. and ed. Robert Louden. 2006, Cambridge University Press.
- Pagination references in the footnotes are to the volume and page number in the German edition of Kant's works: *Kant Kants gesammelte Schriften*. Ed. by the Königlich Preußischen Akademie der Wissenschaften, subsequently Deutsche, now Berlin-Brandenburg Akademie der Wissenschaften (originally under the editorship of Wilhelm Dilthey). 1900-Georg Reimer, subsequently Walter de Gruyter. (1900-). References to the *Critique of Pure Reason* follow the A (first edition), B (second edition) convention.

in accordance with firm principles, it can lead to continual approximation to the highest political good, perpetual peace”.³

The Conclusion to Cosmopolitan Right is in fact also the conclusion to Public Right, which is the second and final part of the Doctrine of Right. That Kant talks here about perpetual peace is not surprising, since perpetual peace, as the highest political good, is supposed to be “the entire final end of the doctrine of right within the limits of mere reason”.⁴ And, yet, what is surprising is that, in spite of the fact that it seems to be a crucial notion for Kant’s moral philosophy, the notion of the highest political good remains largely mysterious and misinterpreted.

The aim of this chapter is to address some problems in recent discussions of the highest political good. My claim is that these problems stem from an exaggeration of the similarities between Kant’s highest political good, perpetual peace, and his highest ethical good, which is more extensively examined by Kant and has received much more attention from commentators.⁵ One problem arises when the highest political good is understood as a complex notion, which includes, in the way in which the highest ethical good does, not only morality, but also happiness. Another problem arises when perpetual peace is regarded, again by analogy with the highest ethical good, as an end the possibility of which requires practical postulates or some replacement of practical postulates. Finally, a third problem is generated by an understanding of the highest political good as an end which has to be deliberately enforced by a person or a few persons on pain of depriving us of freedom and moral responsibility, a claim which again presupposes that the end of perpetual peace requires for its realization ethical motives, in the way in which the highest ethical good does.

In the next section, I will present Kant’s notion of the highest good as an idea and as an ideal. In the third section, I will introduce and argue against the first type of misinterpretation. I will clarify further the notion of the highest political good through an examination of Kant’s distinction between ethical principles and juridical norms. In Section 5, I consider the second and third types of misinterpretation. In Conclusion, I bring together the results of the investigation into one account of the highest political good, an account which I claim to avoid the problems of the three interpretations discussed in this chapter.

The highest good: Idea and ideal

What does Kant take the highest good to be? This notion is firmly part of Kant’s practical or moral philosophy (which includes ethics and political/legal philosophy); nevertheless, my starting point will be his metaphysics and epistemology in the first *Critique*. There, in the second section of The Canon of Pure Reason, Kant focuses On the Ideal of the Highest Good, As a Determining Basis of the Ultimate Purpose

³ *MM* 6: 355.

⁴ *MM* 6: 355.

⁵ I make haste to add that I do not deny that similarities exist between these two notions.

of Pure Reason.⁶ This in its turn suggests that perhaps the first question should be: what, according to Kant, is the ideal of the highest good? Going back one step further takes us to On an Ideal as Such, a section at the beginning of The Ideal of Reason, the third and final chapter of the Transcendental Dialectic.

Kant presents the notion of an ideal through a comparison with the ideas of reason and the pure concepts of the understanding. He takes an ideal to be “further removed from objective reality than is even the idea”.⁷ The pure concepts of the understanding or categories are removed from objective reality insofar as they need intuitions in order to refer to the reality of the objects of experience. They can refer to such objects when they are combined with intuitions. Without the direct reference to objective reality that empirical intuitions offer, pure concepts of the understanding are mere forms of thought. Between concepts of the understanding and objective reality, we have intuitions.

Compared to concepts, the ideas of reason are further removed from objective reality, since no intuition can be found corresponding to these ideas. This is due to the nature of ideas as referring to the unconditioned, as the sum total of specific conditioned aspects of experience. Reason attempts to unify these conditioned aspects in a systematic way, by going from the conditioned to its conditions and hoping to reach “a certain completeness”.⁸ Ideas refer to these complete series of conditions, but there is no intuition and, hence, no cognition of objective reality that can correspond to them.

For instance, the idea of the world-whole refers to the sum of all appearances as connected in cause-effect links. What we can experience are phenomena in time, or in space and time. But any such phenomenon would be the effect of some other, preceding phenomenon. In trying to offer a unified account of what happens in the world, reason is moving from conditioned phenomena to their conditions, in the attempt to complete this process once the unconditioned is found. However, since our experience is in space and time, we cannot have experience of this complete series, or of the world as a whole and, again, this shows why ideas are even further removed from reality than the categories of the understanding.

An ideal is bound up with the corresponding idea, and it refers to the realization of the idea; it is an individual, which represents the instantiation of the corresponding idea. As an illustration, Kant refers to some moral concepts, which (as conceived independently from pleasure/displeasure and in relation to the moral law) are ideas of reason – for instance, virtue or human wisdom. As an illustration of the ideal, we can say that, whereas wisdom is an idea, the wise person is an ideal.⁹

Now that we have some indication of what Kant has in mind when he talks about an ideal, let us see what he takes the ideal of the highest good to be. His starting point is the assumption that there are moral principles.¹⁰ These moral

⁶ A804/B832.

⁷ A568/B596.

⁸ A568/B596.

⁹ A569/B597.

¹⁰ It is often noted that, in the *Groundwork*, Kant attempts to offer a proof for the existence of the moral law through freedom and that in the second *Critique* he changes the strategy and

principles, since they are a priori and prescriptive, provide pure reason (in its practical, prescriptive use) with principles of the possibility of experience, more exactly, of the experience of actions which could be encountered in the history of the human being and which would be in accordance with moral precepts. Moral principles can be principles of the possibility of experience, because of the famous Kantian ‘ought implies can’ dictum: we cannot have an obligation to perform impossible actions and, therefore, since the actions commanded by moral principles ought to occur, they are possible, can occur and, hence, can be experienced.

Yet, if moral principles are also principles of the possibility of experience, then the actions commanded by such principles must be in some systematic unity. Without a systematic unity, contradictions between such actions would be conceivable and, hence, one of the actions in the contradictory pairs would be impossible, although morally required and, hence, possible.

Kant concludes that pure reason in its practical use has causality with regard to free actions. Yet, this does not give it causality with regard to the laws of nature and, hence, the systematic unity of nature cannot be proved. By contrast, given the systematic unity of free actions and given that the principles which guide such actions are principles of the possibility of experience, as shown above, principles of pure reason in its practical use can be shown to have objective reality.¹¹ The world in accordance with all moral laws would be a moral world. Next, Kant clarifies the status of this world.

On the one hand, the moral world is intelligible, since it is a world independently from all non-moral purposes and all obstacles for morality, such as the tendency to prioritise sensible purposes over moral ends. In this sense, the moral world is a mere idea. Yet, Kant adds, it is a practical idea with practical force: it can and ought to influence the actual world in order to bring it as much as possible in accordance with the moral law. In this sense, the idea of the moral world has objective reality.

Finally, Kant specifies that this objective reality that the idea of a moral world has is not to be understood as an object of intelligible or intellectual intuition (which is not available to us anyway), but as having the same status as the actual, sensible world. However, this moral world would be an object of pure reason in its practical use, that is, a state of affairs that rational beings within this world will bring about insofar as their power of choice is, under moral laws, in systematic unity with itself and with the freedom of every other such being.

Next, Kant asks: if a person does what she ought to do, what may she hope? His assumption here is that hoping aims at happiness.¹² Happiness is the satisfaction of all inclinations – extensively, intensively and protensively. Moreover, according to Kant, it is

attempts to demonstrate freedom through the moral law. According to this account, when he starts from the moral law, Kant justifies it as a fact of reason. But what Kant says about the moral law in the first *Critique* suggests precisely an argument through the fact of reason. (A807/B835)

¹¹ A808/B836.

¹² A806/B834.

“necessary according to reason in its practical use, so it is equally necessary also according to reason in its theoretical use to assume that everyone has cause to hope for happiness insofar as he has made himself worthy of it in his conduct”.¹³

Kant regards it as necessarily the case that happiness will follow morality in a moral world understood as intelligible world. The cause of general happiness, Kant thinks, would be freedom under the moral law.¹⁴ Yet, once we focus on the actual world, where others may not act according to the moral law, the nature of things in the world or the causality of the actions accompanied by the relation to morality can no longer guarantee happiness in accordance with morality.¹⁵ The connection between worthiness of happiness and happiness is necessary only “if a supreme reason that commands according to moral laws is also laid at the basis of nature, as nature’s cause”.¹⁶

At this point, Kant defines the ideal of the highest good:

“The idea of such an intelligence wherein the morally most perfect will, combined with the highest bliss, is the cause of all happiness in the world, insofar as this happiness is exactly proportionate to one’s morality (as the worthiness to be happy), I call the ideal of the highest good. Hence, only in the ideal of the highest original good can pure reason find the basis of the practically necessary connection between the two elements of the highest derivative good, viz., the basis of an intelligible, i.e., moral world”.¹⁷

As an ideal, the highest good can be either original or derivative. The original

¹³ A809/B837.

¹⁴ One may wonder here how Kant can answer the following objection, which stems from Kant’s own argument in the second *Critique*: there, he mentions that one obstacle to the realisation of the highest good is that happiness is sometimes distributed arbitrarily, because we do not have control over the way things happen in the world of appearances, and, as a result, the consequences of our actions (even if the actions are moral) may lead to unhappiness. Let us say I am in a competition and I play absolutely fair being also the best competitor; yet, because of some contingent factors (say, some event over which I have no control affects me deeply and influences the way I perform), another competitor appears to the selection committee as worthier of the benefit for which we compete. This would be a situation where my worthiness to be happy is not accompanied by the deserved happiness. One line of reply starts from the assumption that Kant makes in the first *Critique* that the moral world is intelligible. As intelligible, happiness should no longer have to do with the satisfaction of all inclinations but perhaps with the satisfaction of having acted morally. In fact, Kant suggests this when he refers to realisation of the highest good in the intelligible moral world as an implication of the idea of a “system of morality that rewards itself”. (A809/B837)

¹⁵ Kant seems here to introduce a more specific reason in support of the postulate of the existence of God than he offers in the second *Critique*, where he mentions that we lack the necessary control over nature in the processes whereby happiness is obtained.

¹⁶ A810/B838.

¹⁷ A810-1/B838-9.

highest good (God) creates the derivative highest good (the intelligible moral world). The ideal of the original highest good is determined by the idea of the original highest good, and the same goes for the derivative ideal-idea pair. Given that, in the moral world, all obstacles to morality are removed, one may wonder why the original highest good would at all be necessary to connect the two elements of the moral world, virtue and happiness.

This, however, is not a major problem for Kant: the removal of obstacles to morality only means that all actions will be virtuous; it does not yet mean that virtue will be rewarded proportionally with happiness. On the way to the highest good, as mentioned by Kant in the second *Critique*, we still have at least the obstacle of power, which stands in the way of our happiness, since what happens in the world is contingent and we have limited power to control this. Hence, the second postulate of practical reason: the existence of God.¹⁸

The interesting and problematic implication of the discussion so far is that it seems the highest good should always be thought of by analogy with the idea of the highest derivative good corresponding to the ideal presented by Kant in the first *Critique*. In other words, whether we talk about the highest political, ethical or moral-physical good, we can understand it as the necessary connection between two elements of the moral world (virtue and happiness). In what follows, I will examine the problems this interpretation raises for the highest political good, which Kant considers to be perpetual peace.

Ethics and political highest good

In his “Kant’s Political Religion: The Transparency of Perpetual Peace and the Highest Good”, Robert Taylor starts from the famous Kantian ‘ought implies can’ dictum, which he states in the following form for the particular case of an end:

“[...] if we have a duty to set something (e.g., the highest good) as an end, we are authorized by the source of that duty – our own pure practical reason – to believe that end possible so long as this belief is not ruled out by theoretical (speculative) reason”.¹⁹

Hence, in order to have a duty to pursue a certain end, a person has to have a belief that the end is possible, a belief which implies that the end is not impossible, that it is not ruled out by theoretical reason.

The problem, Taylor notes, is that persons who seem rational nevertheless sometimes set themselves ends which seem to them impossible. Consider, for instance,²⁰ a novice at chess who happens to play with the world champion and still

18 The need for the first postulate, the immortality of the soul, is given by the obstacle of time. This is removed in the moral world by the assumption that all limited rational beings like us act morally.

19 Robert Taylor, “Kant’s Political Religion: The Transparency of Perpetual Peace and the Highest Good”, in *Review of Politics*, Vol. 72, No. 1, 2010, p. 6.

20 This is Allen Wood’s example, in *Kant’s Moral Religion*. Cornell University Press. 1970, p. 21.

plays with the goal of winning or²¹ the moderately talented amateur runner who sets himself the goal of running a four-minute mile.

To account for such situations, Taylor proposes a distinction between an end and a standard or criterion. The latter offers direction for effort, allows movement towards it, it is attractive and, other things being equal, being closer to it is desirable. Hence, a standard or criterion, unlike an end, can be set by a person, even when she believes it to be impossible. This distinction, Taylor claims, not only accounts for situations which seem plausible (like those in the two examples above), but also for some of Kant’s claims. In particular, in the Doctrine of Right, Kant claims that perpetual peace, the final end of the doctrine of right is “unachievable”.²²

One way in which Kant’s ‘ought implies can’ dictum as applied to ends is employed by Kant is in the Antinomy of Pure Practical Reason. There, Kant seems to suggest that we can take the highest good as an end only if the highest good is a possible end. Since the highest good, as we have seen in the previous section, represents happiness distributed proportionally to virtue, in order for this necessary link to be possible, Kant introduces the postulates of practical reason (the immortality of the soul and the existence of God). If, however, the ‘ought implies can’ dictum no longer holds, for instance, due to the distinction between an end and a standard, then we no longer need to assume the highest good is possible, in order to set it as an end. The implication is that we no longer need the postulates.

Given that perpetual peace, the highest political good, is presented in the *Metaphysics of Morals* as an unachievable aim, we can make sense of it as a standard. But, if so, we no longer need an appeal to postulates of practical reason to account for. Not surprisingly, therefore, Taylor notes, God plays almost no role in Kant’s Doctrine of Right.²³ Without a need for practical postulates, Kant’s moral religion virtually disappears. So, one possibility would be for him to revert to the claim he makes in the second *Critique* that the possibility of the highest good must be assumed.

According to Taylor, this leads Kant in *Perpetual Peace* to the view that God offers a guarantee of perpetual peace.²⁴ In other words, once we assume that the highest political good must be possible, in order for its realization to be a duty, we need God to account for its possibility, in the same way in which, on the basis of the ‘ought implies can’ dictum, Kant must introduce the postulates of practical reason (including that of the existence of God) in order to account for the possibility of the highest good in the second *Critique*. The assumption, in other words, is that the similarity between the highest ethical good in the second *Critique* and the highest political good in the *Metaphysics of Morals* and *Perpetual Peace* requires the existence of God, as long as we assume that the highest goods are ends that must be

21 This is Taylor’s example, in “Kant’s Political Religion: The Transparency of Perpetual Peace and the Highest Good”, op. cit., p. 7.

22 *MM* 6: 355; Robert Taylor, “Kant’s Political Religion: The Transparency of Perpetual Peace and the Highest Good”, op. cit., p. 8.

23 Robert Taylor, “Kant’s Political Religion: The Transparency of Perpetual Peace and the Highest Good”, op. cit., p. 9.

24 Robert Taylor, “Kant’s Political Religion: The Transparency of Perpetual Peace and the Highest Good”, op. cit., pp. 9-10.

possible in order to be adopted, rather than being, to use Taylor's terms, standards or criteria.

Nevertheless, I think that one crucial distinction that Kant draws in the second *Critique*, as part of his argument for the possibility of the highest good, needs to be considered more seriously. Taylor only mentions it at the beginning of his article, and then it no longer plays any role, although it is I think crucial in that context. As a result, I think Taylor questions unnecessarily the differences between Kant's argument about the highest ethical good, in the second *Critique* and his argument about the highest political good, in the Doctrine of Right.

At the beginning of the second chapter of the Dialectic of pure practical reason, Kant says:

"The concept of the highest already contains an ambiguity that, if not attended to, can occasion needless disputes. The highest can mean either the supreme (*supremum*) or the complete (*consummatum*). The first is that condition which is itself unconditioned, that is, not subordinate to any other (*originarium*); the second is that whole which is not part of a still greater whole of the same kind (*perfectissimum*)".²⁵

Kant talks here about an ambiguity that can lead to needless disputes and this ambiguity is over the adjective "highest". The term can be taken to refer either to what is normatively primordial or to what is most complete. The supreme good is highest in the sense that there is nothing normatively more important. The complete good is highest in the sense that there is no other good which is not included in it.

On the basis of this distinction, we can say that virtue or morality represents the highest good in the first sense, namely, as the supreme good which is not subordinated to any other good, but which subordinates the good of happiness. We can also say that virtue and happiness is the highest good, as the complete or whole good, in the sense that it is more comprehensive than either virtue or happiness taken individually. The supreme good is not complete, since it lacks happiness; the complete good need not be supreme, since a combination of virtue and happiness which does not give pride of place to virtue (in the way in which the particular view of the complete good does in Kant) is normatively weaker than virtue.

In the literature, the 'highest good' is usually taken to refer to the complete good. Even when the distinction between the supreme and complete goods is acknowledged, and even when it is clear we are dealing with a supreme good when we talk about perpetual peace, a link with the complete good is still preserved and this link is too strong. There may be various reasons for this, including Kant's use, in the *Anthropology*, of the expression "the highest moral-physical good",²⁶ which seems to suggest a combination of virtue and happiness, or, as we have seen in the previous section, the way Kant defines the highest good in the first *Critique*, or, finally, Kant's discussion of the highest good in the second *Critique*.

If we understand Kant's highest political good, perpetual peace, to refer to a

complete good, then we can indeed raise the question of the asymmetry between the highest political good in the *Metaphysics of Morals*, and the highest ethical good in the first or second *Critique*, as well as in *Perpetual Peace*, in particular the asymmetry of these notions in their relations to the practical postulates: no appeal to the existence of God in the *Metaphysics of Morals*, but reference to this postulate in *Perpetual Peace*. If the highest political good is understood as supreme, then there is at least one reason why the practical postulates are not needed: unlike the complete good, the supreme good does not have the two elements for the necessary connection of which we need to account.

The problem is that Taylor seems to be aware of perpetual peace as a supreme good. Why then does he think that practical postulates would be needed in the *Metaphysics of Morals*? The answer is in his view of the practical postulates. He thinks that what accounts for the need of the practical postulates in the case of the highest ethical good is given by the opacity of our motivations and, hence, of our ethical worth, as opposed to the observability of our external actions, the only actions Kant is concerned with in the Doctrine of Right of the *Metaphysics of Morals*. Taylor devotes about one quarter of his article to an account of how opacity makes it necessary for Kant to argue for the practical postulates.²⁷

Now, if practical postulates are needed to explain the possibility of virtue or morality, then, given that the highest political good, like virtue or morality, is highest good in the sense of supreme good, there is nothing to prevent the need for postulates in relation to the highest political good too. And this seems to be behind Taylor's suggestion that, in *Perpetual Peace*, Kant introduces the guarantee of peace that God can provide to play a similar role to that of the postulates of practical reason. These, on his account, are meant to overcome the obstacle of the opacity of motivations, which makes it impossible for us to ascertain with certainty our ethical worth or, as Kant calls it, our virtue.

Taylor may have a difficulty here: the difference between perpetual peace and the highest ethical good is not simply that one is supreme, whereas the other one is complete; given that perpetual peace represents for Kant the highest *political* good, perpetual peace should be understood as the supreme good given by the universal principle of right, rather than simply by the categorical imperative. Kant's highest political good requires that we perform actions in accordance with juridical principles. The highest ethical good, by contrast, requires that we perform actions in accordance with ethical principles and for the sake of these principles. If so, the highest political good does not raise the puzzle of opacity and does not need practical postulates to solve it. If so, the fact that God plays no role in relation to perpetual peace in the *Metaphysics of Morals* is not an issue, and Taylor's starting point proves to be a non-starter. Before I return to Taylor, let me examine further the relation, in Kant, between ethical principles and juridical norms.

25 CPrR 5: 110.

26 Anth 7: 277.

27 Robert Taylor, "Kant's Political Religion: The Transparency of Perpetual Peace and the Highest Good", op. cit., pp. 13-18.

The ethical and the juridical

I will begin with Kant's distinction between ethical and juridical lawgiving or norm-giving, and only after that I will turn to ethical and juridical norms as such.²⁸ Thus, Kant identifies two aspects of norm-giving: first, norm-giving contains a norm, which "represents an action that is to be done as objectively necessary"; secondly, norm-giving has an incentive, "which connects a ground for determining choice to this action subjectively with the representation of the law" or norm.²⁹ Hence, in giving a norm or in norm-giving, we do not only provide a norm which represents a duty, but also connect this duty to a ground which determines us to act in such a way that the duty is fulfilled by the performance of the action represented by the norm.

Now, the distinction between ethical and juridical norm-giving is drawn in Kant's account by reference to this incentive. Ethical norm-giving has duty as incentive, whereas juridical norm-giving admits also incentives other than the idea of duty. What this implies is that we can have juridical norm-giving which has duty as an incentive, but we cannot have ethical norm-giving which does not have duty as an incentive. It must also be noted that, in order for a duty to allow enforcement, it must be of a specific kind. One feature determining enforceability is externality: juridical duties represent outer actions.³⁰ But there are other features.³¹

A related distinction Kant introduces here is that between legality and morality. Legality refers to the character of actions performed merely in conformity with a norm, whereas morality refers to the character of the action that is performed in conformity with the norm and out of duty. This means that an action that has morality also has legality, since it is performed in accordance with the norm. In addition, however, an action with morality has a specific incentive, namely, that the action to be performed is a duty.³² Furthermore, in both ethical and juridical norm-giving, legality is implicit, but, in addition, depending on the kind of incentive presupposed by norm-giving, the performed action might also have morality.

In addition, Kant talks about internal and external duties, and, moreover, about internal and external norm-giving. He says, for instance, that ethical norm-giving may have internal or external duties, but as norm-giving, it cannot be external, since the incentive for an ethical norm-giving is duty, which belongs to internal norm-

28 I talk about *norms*, rather than laws or imperatives, because it is sometimes argued that the expressions 'juridical imperative' and 'imperative of right' are misnomers. (Willaschek 2002: 71 n. 11) However, Otfried Höffe does use "imperative of right" (1990). Given the distinction between law and imperative (for instance, *GMM* 4: 414 or *MM* 6: 222), I avoid the use of 'law'. Instead of 'law' (which seems to me inappropriate) or 'imperative' (which Willaschek regards as a misnomer), I use 'norm'.

29 *MM* 6: 218.

30 Note, however, that some duties which represent outer actions are ethical duties, for instance, generosity; even duties which are enforceable may be ethical, for instance, some of the duties to oneself.

31 For instance, other features are implicit in Kant's discussion of ambiguous right. In general, juridical duties must refer to other people, must not immediately require a ground for the determination of the will, and must not presuppose the adoption of an end.

32 *MM* 6: 219.

giving. He also distinguishes between ethical and juridical duties, and, moreover, between directly ethical and indirectly ethical duties. External duties are obligations to external actions, but some such can only be ethical, for instance, the duty of benevolence. Benevolence, Kant says, can only be ethical, since its norm-giving can only be internal. I cannot call an action benevolent, if I am coerced to perform it.

Kant also offers the examples of duties to oneself as specifically ethical duties, but he mentions some such duties are shared between ethics and right. Furthermore, the distinction between directly ethical and indirectly ethical duties is that between duties which are specifically ethical and those which are juridical, but become indirectly ethical through internal norm-giving.³³

Finally, on the basis of the distinction between external and internal actions, Kant also draws a distinction between right generally and strict right. Right generally has as its object what is external in actions. On this definition, right generally can refer to norms which become indirectly ethical through internal lawgiving. By contrast, strict right presupposes by definition the use of coercion and, hence, cannot be mixed with anything ethical.³⁴

The possibility of coercion, which is a condition of strict right, is going to exclude a substantive set of norms as inappropriate for juridical legislation. For instance, all internal norms can be counted out, since their performance cannot be monitored and, hence, it is not possible to determine reliably whether they have been enforced or not.³⁵ Furthermore, all external norms, which require internal norm-giving, such as the norm of benevolence, can also be ruled out as part of strict right. Moreover, even when a norm is external and need not be associated with an internal norm-giving, certain circumstances may make it unenforceable. This is the case of equity, where it is not clear what should be enforced; this is also the case of a right of necessity, where the norm is not enforceable, since it is not punishable.

I think the set of distinctions Kant draws around the divide between ethics and legal or juridical philosophy is going to be useful in explaining one difficulty that recent commentators seem to have with Kant's "Toward" *Perpetual Peace*. For the moment, however, I would like to return to my suggestion concerning a reading of perpetual peace as the notion of supreme political good. The question my suggestion invites is about the relation between perpetual peace and the complete good. Is there perhaps also a complete political good?

In fact, not only is there no complete political good, but there cannot be one. The complete good, as happiness distributed in accordance with virtue, which has normative priority and has to be pursued, includes the highest political good. Thus, the highest political good refers to a situation in which certain norms are in place. This is why Kant talks about a condition of peace [*Friedenzustand*], rather than about a peaceful world. The norms in place in a condition of peace are those of the

33 *MM* 6: 220-21.

34 *MM* 6: 232.

35 This, however, is not altogether unproblematic. One could perhaps reliably condition persons to form motivations through some form of brainwashing or by similar methods. See Newey (2011).

doctrine of right.³⁶

In the *Metaphysics of Morals*, Kant says that “all duties, just because they are duties, belong to ethics”.³⁷ He also says that, “while there are many directly ethical duties, internal lawgiving makes the rest of them, one and all, indirectly ethical”.³⁸ Kant makes these claims in the context of drawing a distinction between ethical and juridical norms. As we have seen, juridical norms are the norms, which can be enforced politically and on the basis of which society and its institutions are organized. Kant’s claim, therefore, is that all norms, including the political norms which are expressed by the laws of a rightful society ought to be performed, even in the absence of all political coercion, because they are morally right.

The implication here is that in a just society all laws can be turned into duties. Ethical norms are derived from the moral law. Political norms, insofar as they are associated with internal lawgiving, should also be derivable from the moral law. As political norms, however, they are derived from the principle of right, because the principle of right makes explicit reference to external actions. This means that, the highest good (as supreme) is indeed not derivable from any other good. The highest political good, too, is not derivable from any other good, unless we define it as a condition determined by political norms associated with internal lawgiving, in which case, it becomes part of the highest good, but it is no longer the highest political good.

Finally, there is a certain sense in which the highest good (as complete) includes the highest political good. Thus, according to Kant, “it is not the case that a good state constitution is to be expected from inner morality; on the contrary, the good moral education of a people is to be expected from a good state constitution”.³⁹ This suggests that the complete good implies as realized also the highest political good. Perhaps even more directly, one can argue that, concerning their normative force, all political norms are derivable from the moral law and, hence, they are part of the complete good, at least as far as their normativity is concerned.

By now we should have a clearer picture of perpetual peace as the highest political good: it is an idea of reason with objective reality from a practical viewpoint, which has supreme political normative force, but is part of the Kantian complete good. One objection to the view that Kant’s perpetual peace as the highest political good corresponds more adequately to the supreme ethical good, rather than to the complete good can start from Kant’s discussion of the First supplement to preliminary and definitive articles for perpetual peace. This first supplement is a guarantee of perpetual peace. If we conceive of perpetual peace as a kind of complete good, which requires two distinctive elements, then the guarantee can be explained as grounding the connection between these two elements. If we conceive of perpetual peace as a simple juridical condition, then it is not clear why we would need an additional guarantee.

As I have mentioned in the previous section, Taylor seems to make the

following philosophical move: He takes the practical postulates to have the function of solving the problem of opacity. This problem applies also to the supreme ethical good, so perhaps it may also apply to the supreme good represented by perpetual peace. From the perspective of this section, we now know that Taylor’s problem is that perpetual peace does not in fact raise a problem of motivation and opacity. So, Taylor cannot suggest Kant’s appeal to God in *Perpetual Peace* would be similar to his appeal to the practical postulates in the second *Critique*.

But what I call an issue for Taylor turns out to be a puzzle for us, since he seems to be aware of the further difference between the highest ethical and political goods. This leaves him without an answer to the very question with which he starts: Why does Kant introduce an appeal to God in *Perpetual Peace*, while the highest political good in the *Metaphysics of Morals* is presented independently from any such reference? It cannot be because this would make the highest political good possible, since this represents a set of juridical norms, the possibility of which (in terms of feasibility and enforceability) are presupposed by the very concept of a juridical norm. I suggest that Taylor’s problem is a more difficult one, having to do with the status of the guarantee of perpetual peace. Taylor is not the only commentator who draws an analogy between the practical postulates and the guarantee, as we will see in the next section. In fact, in the next section, we will also have an illustration of a more serious misinterpretation – the confusion of the supreme and complete goods.

The need for a guarantee of perpetual peace

According to Lea Ypi, concerning Kant’s “Toward” *Perpetual Peace*,

“The real issue is to understand why a ‘guarantee’ of perpetual peace is required at all and, if so, whether Kant’s thesis on human progress may be coherently disentangled from an a Critical assumption of providence and still ultimately defended”.⁴⁰

Her answer to the first question, the question of the need for a guarantee, starts from the assumption that those who are expected to introduce the juridical norms of a condition of peace should act not simply on prudential motives, but should be inspired by universal moral motives.⁴¹ This, she suggests, seems to imply that the task of bringing about perpetual peace is also the task of developing humanity’s moral disposition, which requires coordination between citizens and continuous progress. Hence, this leads to her second question: can Kant justify coordination and continuity in a Critical way?

Ypi argues that, in the second *Critique*, Kant addresses the problems of

36 *MM* 6: 355.

37 *MM* 6: 219.

38 *MM* 6: 221.

39 *PP* 8: 366.

40 Lea Ypi, “Natura Daedala Rerum? On the Justification of Historical Progress in Kant’s Guarantee of Perpetual Peace”, in *Kantian Review*, Vol. 14, No. 2, 2010, p. 121.

41 Lea Ypi, “Natura Daedala Rerum? On the Justification of Historical Progress in Kant’s Guarantee of Perpetual Peace”, op. cit., p. 123.

coordination and continuity by reference to the practical postulates.⁴² Next, she notes that, in the earlier “Idea for a universal history with a cosmopolitan purpose”, Kant offered a different solution: for the problem of coordination, he introduced the idea of man’s unsocial sociability and, for the problem of continuity, he suggested that the task of realizing the highest political good be one for the human species, not for individuals with short life-spans.⁴³

Yet, there seems to be a remaining problem about the status of the guarantee. The essay on history, Ypi notes, suggests as solution the way in which nature intervenes teleologically to transform the human species, and this deprives human beings of moral responsibility, not to mention that such a claim seems to go beyond the epistemological limits Critical philosophy establishes; the approach in the first two *Critiques*, she continues, suggests that the highest good can be realized by the reciprocal recognition of the agents’ moral obligations, but then it becomes unclear what the function of the practical postulates is and, in fact, it becomes again unclear why we need a guarantee at all.⁴⁴

Her solution makes recourse to Kant’s third *Critique* and the starting point is the difference she notes between Kant’s view of physicotheology in the first and third *Critiques*.⁴⁵ In addition, she thinks Kant reformulates the practical postulates in the third *Critique* through “the analysis of natural teleology from the standpoint of human history”, and this leads to a different “conceptualisation of a ‘guarantee’ for the realization of the highest good in the world”.⁴⁶

Although I disagree with some of the philosophical moves adopted in order to provide this solution⁴⁷, I think the interpretation provided is original and perhaps worth exploring on its own; what I would like to emphasise, however, is that the assumption seems to be that the guarantee is meant to justify the possibility of the “highest good”,⁴⁸ understood as the complete good. The function of the practical postulates in the Antinomy of practical reason is to demonstrate a necessary connection between virtue and happiness. As we have seen, the challenge for an interpretation which does not distinguish between the complete good and the supreme good, and then between the supreme ethical and the supreme political good in Kant is to try to find some way in which the guarantee Kant offers in *Perpetual*

42 Lea Ypi, “Natura Daedala Rerum? On the Justification of Historical Progress in Kant’s Guarantee of Perpetual Peace”, op. cit., p. 128.

43 Lea Ypi, “Natura Daedala Rerum? On the Justification of Historical Progress in Kant’s Guarantee of Perpetual Peace”, op. cit., pp. 128-9.

44 Lea Ypi, “Natura Daedala Rerum? On the Justification of Historical Progress in Kant’s Guarantee of Perpetual Peace”, op. cit., pp. 129-30.

45 Lea Ypi, “Natura Daedala Rerum? On the Justification of Historical Progress in Kant’s Guarantee of Perpetual Peace”, op. cit., p. 131.

46 Lea Ypi, “Natura Daedala Rerum? On the Justification of Historical Progress in Kant’s Guarantee of Perpetual Peace”, op. cit., p. 136.

47 I doubt that Kant’s attitude to physicotheology has changed from the first *Critique* to the third, and the quotation from the first *Critique* provided by Ypi in support of her claim seems to me to be inconclusive.

48 Lea Ypi, “Natura Daedala Rerum? On the Justification of Historical Progress in Kant’s Guarantee of Perpetual Peace”, op. cit., p. 136.

Peace can provide an argument for the necessary connection between virtue and happiness in relation to the highest political good, perpetual peace.

This looks like an attempt to square the circle, since the highest political good is a supreme political good, and there is no happiness which is required to realize this political good. In order to explain the status of the guarantee, Ypi simply introduces a requirement that the highest political good be realized with ethical motivations. This, however, is neither required nor rejected by Kant.

Let me consider now a third approach to Kant’s highest political good. Even in this case, I would like to claim, although the status of perpetual peace as a supreme political good is fully acknowledged, there still seems to remain a strong link to the highest ethical good, a link which leads to some problems in the way perpetual peace is understood. According to Katrin Flikschuh, we should not read Kant’s guarantee as giving support to the highest political good. Instead, we should understand the highest political good,

“from the perspective of one who acknowledges the concept of Right as a pure rational concept (MM, 6:229-30), and who is cognizant, in consequence, of the a priori obligation, in virtue of their freedom, to act in accordance with Right”.⁴⁹

I think both Ypi and Taylor would agree with this, although this is not a view that has always been taken for granted.⁵⁰ Flikschuh’s account differs however from Taylor’s and Ypi’s, insofar as she no longer links the guarantee to the practical postulates. She thinks that, in the First supplement, Kant intends to show how it is possible to realize in our world the noumenal or non-sensible demands of the doctrine of right. She goes back to the contrast between ethics and juridical philosophy in Kant’s moral theory and argues that, in contrast to ethics, in juridical philosophy, we can regard agents as “externally compelled to act in outward conformity with laws of external freedom”.⁵¹ Moreover, she thinks in the domain of right, there is a requirement concerning “the empirical manifestation or institutionalisation of coercive laws of external freedom”.⁵²

Concerning the status of this problem of the sensible realization of non-sensible juridical norms, she thinks it is a “technical”, not a “moral” problem, since the ‘ought’ implies ‘can’ dictum means it should be possible for us to pursue the end

49 Katrin Flikschuh “Reason and Nature: Kant’s Teleological Argument in Perpetual Peace”, in G. Bird (ed.) *A Companion to Kant*. 2006. Blackwell, p. 383.

50 Flikschuh, Taylor and Ypi make reference to several authors who offer alternative interpretations, for instance, Heinz-Gerd Schmitz “Moral oder Klugheit? Überlegung zur Gestalt der Autonomie des Politischen im Denken Kants”, in *Kant-Studien*, Vol. 81, No. 4, 1990, 413-34; Yirmiyahu Yovel *Kant and the Philosophy of History*. Princeton University Press. 1980; Otfried Höffe. “Even a nation of devils needs a state: The dilemma of natural Justice”, in H. Williams (ed.) *Kant’s Political Philosophy*. University of Wales Press. 1992; Paul Guyer. *Kant on Freedom, Law and Happiness*. Cambridge University Press. 2000.

51 Katrin Flikschuh “Reason and Nature: Kant’s Teleological Argument in Perpetual Peace”, op. cit., p. 387.

52 Katrin Flikschuh “Reason and Nature: Kant’s Teleological Argument in Perpetual Peace”, op. cit., p. 387.

of a juridical condition of peace. Yet, “unless we do identify a way of empirical instituting external relations of right, we cannot discharge our acknowledged juridical obligations”.⁵³

According to her, Kant’s argument is that nature makes it possible for man to act in accordance with juridical norms, but does not bring about man’s moral ends directly.⁵⁴ This can be seen in Kant’s account of “a possible future history”, where he introduces the idea of deliberate human agency – not as a result of the demands of practical reason, but through human understanding.⁵⁵ Flikschuh discusses this in relation to Kant’s famous argument that “the problem of establishing a state, no matter how hard it may sound, is soluble even for a nation of devils”.⁵⁶

Her concern is mainly to reject a prudential reading of Kant’s account here. The prudential interpretation takes Kant to suggest that the juridical norms meant to regulate the life of the citizens in a state are to be deduced through the test Kant formulates in the same context:

“Given a multitude of rational beings all of whom need universal laws for their preservation but each of whom is inclined covertly to exempt himself from them, so to order this multitude and to establish their constitution that, although in their private dispositions they strive against one another, these yet so check one another that in their public conduct the result is the same as if they had no such evil disposition”.⁵⁷

Kant’s intention here, Flikschuh argues, is not to take juridical norms to be justified with reference to inclinations, but to deliberately use inclinations for purposes of empirical institutionalisation; nor should this be interpreted, she adds, as an argument that self-seeking inclinations provide reasons for entering a republican state.⁵⁸ In short:

“Kant’s account of republican constitutional design involves a complex relation between reason, nature, and understanding. Reason dictates acknowledgement of a priori valid reciprocal obligations of Right. Yet given human moral frailty, constitution drafters abstract from this acknowledged duty of Right as direct incentive. Their understanding of nature’s causal mechanism enables them to employ a specifically targeted aspect of human nature that makes possible the

53 Katrin Flikschuh “Reason and Nature: Kant’s Teleological Argument in Perpetual Peace”, op. cit., p. 387.

54 Katrin Flikschuh “Reason and Nature: Kant’s Teleological Argument in Perpetual Peace”, op. cit., p. 390.

55 Katrin Flikschuh “Reason and Nature: Kant’s Teleological Argument in Perpetual Peace”, op. cit., p. 391.

56 Katrin Flikschuh “Reason and Nature: Kant’s Teleological Argument in Perpetual Peace”, op. cit., p. 366.

57 Katrin Flikschuh “Reason and Nature: Kant’s Teleological Argument in Perpetual Peace”, op. cit., p. 366.

58 Katrin Flikschuh “Reason and Nature: Kant’s Teleological Argument in Perpetual Peace”, op. cit., pp. 391-2.

design of empirical constitutional arrangements that are in outward conformity, at least, with the demands of pure practical reason. [...] Similar strategies of argumentation are employed with regard to the two remaining levels of public Right – Right of nations and cosmopolitan Right”.⁵⁹

The suggestion is therefore that Kant’s guarantee presents features of human nature that can be employed deliberately in order to incentivise those who cannot determine themselves morally to follow juridical imperatives dictated by reason. In the same way in which those who draft a constitution can organize society in such a way that human frailty is overcome through the use of precisely the cause of this frailty, inclinations, those who realize the need for a federative union of states can employ private inclinations at the intrastate level to bring that union about.

I think Flikschuh is right to regard perpetual peace as merely a juridical condition of peace, consisting of several juridical norms, as dictated by reason, and constituting a highest political good, in the sense of a supreme political good (although she does not put emphasis on the distinction between the supreme and the complete good and she does not argue against interpretations which read perpetual peace as a complete political good). I think she is right to argue that the guarantee is a technical, rather than a moral argument, which would contribute to the justification of the juridical norms constituting the condition of peace. I am, however, uncertain that the highest political good needs a further argument demonstrating that it can be institutionalised.

This is not far from the suggestions made by Taylor and Ypi, who both see the highest political good as needing some further argument due to the ‘ought implies can’ dictum. According to Taylor, the guarantee is needed to show that the highest political good is achievable; according to Ypi, that it can be pursued for the right reason (thus guaranteeing coordination and continuity); according to Flikschuh, it is needed for institutionalisation. But such arguments are puzzling, if we think back to Kant’s discussion of the highest good in the first *Critique*. As ideas of reason or as ideals, the highest goods are in a sense unachievable or practically impossible. Moreover, the condition Kant sets for juridical obligations is much weaker:

“What would be made our duty in this case [...] is rather to act in conformity with the idea of that end, even if there is not the slightest theoretical likelihood that it can be realized, as long as its impossibility cannot be demonstrated either”.⁶⁰

So, when Flikschuh says that “unless we do identify a way of empirically instituting external relations of Right, we cannot discharge our acknowledged juridical obligations”,⁶¹ she is of course right, but she claims this follows from the ‘ought

59 Katrin Flikschuh “Reason and Nature: Kant’s Teleological Argument in Perpetual Peace”, op. cit., p. 392.

60 *MM* 6: 354.

61 Katrin Flikschuh “Reason and Nature: Kant’s Teleological Argument in Perpetual Peace”, op. cit., p. 387.

implies can' dictum, and this is wrong. Moreover, the way she formulates this dictum is much stronger than in Kant: "Ought implies can: insofar as we acknowledge our a priori obligations of Right, we must assume that it is possible for us to act on these obligations under given sensible conditions".⁶² Kant only suggests that we assume it is not impossible to act in that way. Moreover, this is a condition for acknowledging our a priori juridical obligations, not a condition for discharging them, as Flikschuh has it a bit after this.⁶³

Before concluding, I would like to question an additional claim in Flikschuh's argument. According to her, the highest political good is going to be institutionalised in the following way: constitutions drafters will contribute to people's compliance with the juridical norms of perpetual peace; aware of human moral frailties, "they employ the means of nature in order to effect an outcome that ensures outward conformity with these acknowledged principles even if individuals' wills should fail them".⁶⁴ It is not clear why she decides to interpret Kant's guarantee in this way, although Kant clearly talks about nature as bringing about this compliance.

One hypothesis I have starts from Flikschuh's claim that "Kant's contention [...] is not that nature brings about man's moral ends directly".⁶⁵ Instead, she emphasises the "deliberate employment of sensible inclinations for purposes of empirical institutionalisation".⁶⁶ So perhaps one reason why Flikschuh offers this interpretation against Kant's claim that it is "nature" that "does" something for the "purpose of perpetual peace" may be that she thinks nature deprives us of moral responsibility or freedom. Both these claims are made in the literature.⁶⁷ The difficulty, of course, is that there are various notions of freedom in Kant.

If we talk about a mere freedom to perform certain external actions, then, as Flikschuh acknowledges, although the enforcement of juridical norms may reduce our freedom in this sense, it is nevertheless legitimate.⁶⁸ Whether the enforcement

is produced by constitution drafters or nature should not matter. If we talk about transcendental freedom, as freedom from the chains of causality, then, again, this is not going to be affected by additional causal links introduced by nature. With Kant's Third Antinomy in mind, we can say that there is no freedom-related reason to attribute the guarantee to drafters, rather than to nature. The same goes also for the case when we take freedom to refer to autonomy. The point of the discussion, in the first *Critique*, about ethical principles as principles of the possibility of experience was precisely that additional natural mechanisms will not reduce our ability to follow ethical principles and, hence, to act autonomously. The only situation which would make Flikschuh's claim plausible would be that where nature acts upon our inclinations and makes them stronger and more difficult to be opposed, and where the highest political good would again be taken to require that actions be performed with ethical motivations. But the latter condition is something I have been arguing throughout this paper that we need to resist.

Before I conclude, I should note that the discussion of the highest political good has gradually brought about another important related topic, that of the status of the guarantee of perpetual peace. For the purpose of this chapter it must suffice to mention this problem. An examination of the guarantee would go beyond the scope of this chapter.⁶⁹

Conclusion

The highest political good is a crucial notion for Kant's moral philosophy, but it has not been the focus of much discussion. In this chapter I have started to address this problem by presenting some of the notion's important aspects and by examining several misinterpretations. I began with Kant's distinction between the idea and ideal of highest good, and with his distinction between the original and the derivative highest good. The original highest good, God, is the ideal of the original highest good, as happiness distributed in accordance with worthiness of happiness. The original highest good is also the source of the derivative highest good. The ideal of the derivative highest good is a moral world, where persons are rewarded in proportion to their virtue. Both the idea and the ideal of the highest good are removed from objective reality, in the sense that, for limited rational beings like us, there is no intuition which could prove their objective reality. Kant takes the systematic unity of free actions to have objective reality, since concrete actions can be performed that are virtuous. What seems to be unrealizable is the ideal of a virtuous person and the ideal of the moral world. This is because we are limited in time, and the progress to virtue is unlimited, and because we are limited in power, and cannot control the distribution of happiness in accordance with virtue.⁷⁰

op. cit., pp. 386-7.

69 I look at this in Sorin Baiasu, "The Final End of the Doctrine of Right: Comments on RL 6: 354-355". Paper presented to a Workshop on Kant's Metaphysics of Morals. Organiser: Harry Lesser. University of Manchester. 2012.

70 There is of course also the problem of opacity. Discussion of this problem (for instance, in Robert Taylor, "Kant's Political Religion: The Transparency of Perpetual Peace and the

62 Katrin Flikschuh "Reason and Nature: Kant's Teleological Argument in Perpetual Peace", op. cit., p. 387.

63 I should add that this has nothing to do with the prudential reading of the highest political good, which I agree with Flikschuh is not what Kant's text suggests. So I remain puzzled why she links the two: "Unless we do identify a way of empirically instituting external relations of Right, we cannot discharge our acknowledged juridical obligations. The point is simply to insist against prudential readings..." – Katrin Flikschuh "Reason and Nature: Kant's Teleological Argument in Perpetual Peace", op. cit., p. 387.

64 Katrin Flikschuh "Reason and Nature: Kant's Teleological Argument in Perpetual Peace", op. cit., p. 392.

65 Katrin Flikschuh "Reason and Nature: Kant's Teleological Argument in Perpetual Peace", op. cit., p. 390. A claim formulated also at page 388.

66 Katrin Flikschuh "Reason and Nature: Kant's Teleological Argument in Perpetual Peace", op. cit., p. 390.

67 For instance, Lea Ypi, "Natura Daedala Rerum? On the Justification of Historical Progress in Kant's Guarantee of Perpetual Peace", op. cit., p. 129 and Paul Guyer, *Kant on Freedom, Law and Happiness*, op. cit., p. 425. Like Ypi, Guyer also introduces as a requirement for perpetual peace that it be done by "morally motivated acts of human will" – *Kant on Freedom, Law and Happiness*, op. cit., p. 425.

68 Katrin Flikschuh "Reason and Nature: Kant's Teleological Argument in Perpetual Peace",

I have then argued that an important distinction that Kant presents in the second *Critique*, that between the supreme and the complete highest good, is important for an understanding of the highest political good. The highest ethical good that Kant introduces in the first *Critique*, and that he discusses also in the second *Critique*, is the complete good. By contrast, virtue or the highest political good are instances of the supreme good. The difference between virtue and the highest political good was clarified through an examination of the relation, in Kant, between ethical principles and juridical norms. What is specific for virtue is that ethical principles need to be observed for the sake of duty, whereas the highest political good only requires that we act in conformity with certain juridical norms, irrespective of the motivation of our action.

The discussion of the relations between the ethical and the juridical in Kant has also demonstrated that Kant takes as conditions for legitimate juridical norms their enforceability, which includes the possibility of observing them and the possibility of monitoring compliance with them. Moreover, according to Kant, what we need in order to be able to adopt an end as a duty is only the belief that the end be not impossible. We must strive to realize an end, such as the highest political end, even when there is not the slightest likelihood that it can be realized. As we have seen above, the possibility to monitor and enforce are conditions which must be met by juridical norms in order to be considered as able to generate laws in a society. Norms which cannot be monitored or enforced are excluded as impossible. Those which are not excluded in this way remain legitimate and must be adopted and followed.

Hence, unlike the highest ethical good, the highest political good is possible even if we do not introduce the postulates of practical reason – it does not presuppose that we have infinite time to improve our worth and it does not presuppose a necessary connection that could be brought about by an all-powerful being. Moreover, unlike the highest ethical good, the highest political good can be enforced. That the highest political good is enforced by nature, as Kant explains the guarantee of perpetual peace, does not affect our freedom. It remains however to be seen what epistemic status the claim to such a guarantee can have without transcending the limits of reason.

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Highest Good", op. cit.) seems to suggest that we know nothing about the ethical worth of our actions. I think that, in fact, Kant's point is only that we cannot know anything with absolute certainty. Yet, I think this should not be regarded as a huge problem – after all, there is nothing that we know with absolute certainty. I argued for the possibility of plausible judgements of ethical worth in Sorin Baiasu, "Kant's Account of Moral Motivation: A Sartrean Response to Some Hegelian Objections", in *The Bulletin of the Hegel Society of Great Britain*, Vol. 61, 86-106.

How Many Formulas? An Alternative Reading

Valentin MURESAN

This article is focused on the significance of the categorical imperative's *formulas*, on their number, function and reciprocal relations. This is the kind of topic that divided Kant's commentators into several groups. The number, the nature, the functions, the reciprocal relations, even the names of the formulas were, over the years, the subject of vivid disputes.

For instance, some remarkable commentators like D. Ross and H. J. Paton claimed that there are five formulas: the Formula of the Universal Law (FUL), the Formula of the Law of Nature (FLN), the Formula of Humanity (FH), the Formula of the Autonomy of the will (FA) and the Formula of the Kingdom of Ends (FKE). Some others speak of four formulas: FUL, FLN, FH, FA (Duncan) or FUL, FH, FA, FKE (Guyer) or FUL, FLN, FH, FKE (Norman). There are commentators who cannot find more than three formulas: FUL, FH, FKE (Caird, O'Neill) or FUL, FH, FA (Broad, Wood). And, as if to complete this mysterious enumeration, Kant himself spoke of "three" formulas - FUL, FH, FA (at G. 431) and FLN, FH, FKE (at G. 436).¹

Moreover, one usually speaks without distinction about "formulas" and "formulations". In a recent commentary to the *Groundwork*², Timmermann claims that the supreme principle of morality (named by him "The Categorical Imperative") has four "formulations": "the general formulation" (well known as the *Formula of Universal Law* - FUL) and its three "variations". The latter are what I have called the *Formula of the Law of Nature* (FLN), the *Formula of Humanity* (FH) and the *Formula of Autonomy* (FA).³ Höffe also counts four "formulations" but different from those of Timmermann. In an equally recent commentary, Sally Sedgwick speaks about "formulations"⁴ as well. Kerstein claims instead that the supreme principle of morality (SPM) is not FUL, but the *Formula of Humanity*.⁵ He is in agreement with Paul Guyer and many other distinguished authors.⁶ On the other

1 References to the Academy edition; the translation of the *Groundwork*, of the *Critique of Practical Reason* (CPrR) and of the *Metaphysics of Morals* (MM) is by Mary Gregor (in I. Kant, *Practical Philosophy*, Cambridge University Press, 1999); the translation of the *Critique of Pure Reason* (CPR) is by N. Kemp Smith.

2 J. Timmermann, *Kant's Groundwork of the Metaphysics of Morals: A Commentary*, Cambridge University Press, 2007, p. 77.

3 V. Mureșan, *Comentariu la Întemeierea metafizicii moravurilor*, (*A Commentary to the Groundwork*) in I. Kant, *Întemeierea metafizicii moravurilor*, Humanitas, București, 2007, chapter 4.

4 S. Sedgwick, *Kant's Groundwork of the Metaphysics of Morals, An Introduction*, Cambridge U.P., 2008, p. 111, 143.

5 S. Kerstein, *Kant's Search for the Supreme Principle of Morality*, Cambridge University Press, 2004, p. 46.

6 P. Guyer, *Kant's System of Nature and Freedom*, Clarendon, Oxford, 2005, p. 250.

hand, Wood contends that the SPM is not *one* of these formulas, but a *system* of formulas.

As concerns the reciprocal relations between them, there are writers upholding their *logical equivalence* (Höffe, Delbos); this implies that, if there are four, three of them are *dispensable*: "Given the fact that the four formulae are equivalent between them, we can focus, to simplify things, on the basic formula and on its first minor formula, which make from the order of nature the type of moral law", i.e. we can use *in extremis* only FUL and FLN.⁷ Victor Delbos is also a partisan of their equivalence: "From each of these formulae one can effectively bring out, through a simple analysis, the other two, and the three formulae analytically follow themselves from the concept of a good will [...]. For Kant, the essential formula of the moral law" is FUL. Some other authors claim they are "partially intensionally equivalent" (in the sense that the "contradiction in conception" case is "intensionally equivalent" to the aspect of FH that requires us to act only on maxims that do not treat humanity as mere means) and are also "extensionally equivalent" (giving the same results in the appraisal of maxims).⁸

Now, how could we manage this chaotic diversity? I shall begin by discussing the *background* to Kant's approach. I have in view his epistemological background, i.e. the new type of *ethical theory*, grounded in the metaphysics of morals. This original conception of scientific theories (physical and ethical) is similar to the approach of contemporary meta-theoretical structuralism (Stegmüller, Moulines, Pârnu), based on the procedure of "rational generalization" (central to Bohr's thesis). I am suggesting in this article an extension to the critique of practical reason of the "theory of the critique of pure speculative reason" reconstructed in terms of meta-theoretic structuralism by Professor Ilie Pârnu⁹ from the University of Bucharest. A two-fold function of Kant's "formula" is also proposed (that of establishing the *criteria* of all duty and that of providing the *procedure* to determine whether the empirical maxims satisfy these criteria). Therefore, as in many other central concepts (e.g. the double nature of man, the descriptive-prescriptive form of practical laws, the intelligible/visible worlds etc.) the concept of "formula" has likewise a double nature. I claim that all the well known "formulas" of Kant's theory belong to its pure part; their number is not arbitrary, it is precisely determined by the "progression of the categories of quantity". The empirical applications of the theory (i.e. the part called "applied ethics") use distinct procedures that belong to the "power of judgement", not to reason. In my interpretation, the supreme principle of morality is not a single formula, but a couple of formulas: FA+FKE, each being a synthesis of two others. These basic formulas are used to "derive" the 14 a priori duties of human beings *as such*. Only through these distinctive duties may the theory be *applied* to actions in experience.

7 O. Höffe, *Introduction à la philosophie pratique de Kant*, Vrin, Paris, 1993, p. 81.

8 O. O'Neill, *Constructions of Reason*, Cambridge University Press, 1994, p. 139.

9 I. Pârnu, *Posibilitatea experienței (The Possibility of Experience)*, Politeia-SNSPA, București, 2004. I have proposed this extension in my commentary included in I. Kant, *Întemeierea metafizicii moravurilor (Groundwork of the Metaphysics of Morals)*, Humanitas, București, 2007, chap. 5.3.

The metaphysical “revolution” and the meaning of “*Formel*”

A lot of Kantian commentators adopted what I shall call *the formulation view*: they accepted as standard the usual translation of the German term “Formel” with “(linguistic) formulation”. Or, they use “formula” and “formulation” alternatively. As Alan Wood says, let us study “Kant’s *formulations* of the moral law”. In the same manner, Timmermann speaks about “alternative formulations”, or “variants”, or “reformulations” of SPM. When these authors say “the *formula* of the Supreme Principle of Morality (SPM)”, they actually mean, I suppose, the *linguistic formulation* of the SPM (plus its “reformulations”). Some of them speak also about the “intensional equivalence” between formulations, about *analyticity* and the *deductive* meaning of the a priori “derivation” of duties, Kant’s theory being considered a landmark of the “*deductive tradition*”¹⁰ in ethical theory. All these observations imply that such authors assign Kant a *propositional view* on scientific theories, in the *logical* Aristotelian tradition, even if they do not explicitly stress this aspect. I believe this to be a wrong choice. Although this seems to be something peripheral, it will have, surprisingly, deep implications.

The reader interested in Kant’s original approach to moral philosophy is disappointed to find that all these “variants” “serve [only] a rhetorical function”.¹¹ On the contrary, I am tempted to take Kant seriously and claim that rhetoric is never his priority and the term “Formel” means “formula” in a *technical* sense, borrowed partly from law, but mainly from *mathematics*:

[A reviewer said that] “no new principle of morality is set forth in [the *Groundwork*] but only a *new formula*. [...] But whoever knows what a *formula* means to a mathematician, which (ii) determines quite precisely what is to be done to solve (i) a problem and does not let him miss it, *will not take a formula that does this with respect to all duty in general as something that is insignificant and can be dispensed with*”. (CPrR, 5: 9f)

Therefore, a “formula” (i) has to *state the problem* to be solved, e.g. what is the cube volume?; which is the *model* (criteria) of all duty in general?; and (ii) gives us the *procedure* to solve it, e.g. an algorithm to calculate the cube volume; a procedure to derive a priori the duties of human beings as such without missing the target.¹² This kind of “formula” as a supreme principle of morality, together with the a priori duties for human beings as such that result from it, each having the

10 R. Dworkin, *Theory, Practice and Moral Reasoning*, in D. Copp (ed.) *Ethical Theory*, Oxford University Press, 2006, p. 627. An ethical theory gives us an universal moral principle from which it is possible to *logically deduce* general moral rules concerning action-types which, supplemented by a minor premise telling that an act has certain characteristics, allow us to *deduce* that that act is a moral duty. Utilitarianism, Kantianism and Christian ethics are considered to belong to this class of theories.

11 J. Timmermann, *Kant’s Groundwork...*, p. 106.

12 “All mathematical problems, in which the laws for solving the problem constitute the imperative, in that they prescribe what has to be done should one wish to solve it ... The purpose itself is one of technical skill” (LE, 27: 486).

form of a categorical imperative, belong to the *pure* part of the theory¹³ and not to the *empirical* one (the “corollaries”). The above passage suggests also the two-fold meaning of the formula of the supreme principle of morality. Both functions are important but how could they be accomplished simultaneously?

This two-fold meaning is plausible and interesting only if put in the *context* of the “revolution” intended by Kant in metaphysics and is related to his innovative vision of the meaning of “scientific theory”, in particular of “ethical theory”. The kernel of Kant’s revolutionary proposal consists in *changing the method* of metaphysics; part of this methodological shift is represented by the change of the method of theorization and the grounding of actual empirical science on an a priori foundation (on “the metaphysic of nature”) modeled on Newton’s theory of mathematical physics. This meant to abandon simultaneously the Aristotelian *logical* view of theory as a deductive architecture of true propositions validated by experience which is, unavoidably, an *empirical* theory. We should say today, roughly, that Kant abandoned a kind of “statement view” of theories and adopted a kind of “structuralist” or “model-theoretic” view.¹⁴ In short, because Kant abandoned the received view of scientific theory (under the influence of mathematical physics) it is very plausible to suppose that his concept of “Formel” (“the *Formel* of SPM”) – and many other concepts – were *adapted* to the new epistemological context.

The revolutionary project has been announced over the years, but the decisive step was made in the *Critique of Pure Reason*:

“Now the concern of this critique of pure speculative reason consists in that attempt to transform the accepted procedure of metaphysics, undertaking an entire revolution according to the *example of geometers and natural scientists*. It is a treatise on the method, not a system of science itself”. (CPR, B xxiii).

“For after this alteration in our way of thinking we can very well explain the possibility of a cognition [...] of the laws that are the *a priori* ground of nature, as the sum total of objects of experience”. (CPR, B xix)

Kant began to approach this subject several years previously, in a period when his independent thinking had started to gradually manifest itself, even if his original philosophy was not yet articulated. The excerpt that follows is an anticipation of the new method developed in a paper for a competition organized by the Academy of

13 FUL, FA, FLN, FH etc. all have the form of a categorical imperative of reason; the categorical imperative, “because it asserts an obligation with respect to certain actions, is a morally practical law” (MM, 6: 223). Therefore it is *a priori*. These formulas are only *formal* categorical imperatives which (i) “only affirms what obligation is” and (ii) show us how we could “know” whether a subjective maxim “also hold objectively” (6: 225). The “principles of duty of the human being as such” tell man “how he *ought* to act”, being a “principle that reason prescribes to him absolutely and so objectively”, therefore a priori (6: 226). So, to apply the a priori principles of duty to actions in experience we need “principles of application”. One and the same principle of duty binds a man in a variety of ways, which depend on the variety of matter the resultant hypothetical imperatives have.

14 I. Pârvu, *Posibilitatea experienței (The Possibility of Experience)*, Politeia-SNSPA, București, 2004.

Berlin (1763):

“The true method of metaphysics is basically the same as that introduced by *Newton* into natural science and which has been of such benefit to it. *Newton*’s method maintains that one ought, on the basis of certain experience and, if needed, with the help of geometry, to seek out the rules in accordance with which certain phenomena of nature occur. Even if it does not discover the fundamental principle of these occurrences in the bodies themselves, it is nonetheless certain that they operate in accordance with this law. Complex natural events are explained once it has been clearly shown how they are governed by these well-established rules”. Likewise in metaphysics: we have to seek out “by means of certain inner experience, that is to say, by means of an immediate and self-evident inner consciousness [...] those characteristic marks which are certainly to be found in the concept of any general property. And even if you are not acquainted with the complete essence of the thing, you can still safely employ those characteristic marks to infer a great deal from them about the thing in question”. (2: 286)¹⁵

Kant looked for an alternative to the empirical theories of ethics (“theories having to do with objects of intuition”) and his original proposal was a kind of theory “in which objects are represented only by means of concepts (with objects of mathematics and objects of philosophy)”. This kind of theory, inspired by mathematical physics, included “objects that could be *thought* quite well” although they “could not be *given* at all, but might well be mere empty Ideas” of which “no use would be made in practice” (TP, 8: 276). In a latter work, the *Metaphysics of Morals*, Kant stressed his intention to make ethics a kind of science based on the a priori first principles of the metaphysics of morals:

“A *philosophy* of any subject (a system of rational cognition from concepts) requires a system of *pure rational* concepts independent of any conditions of intuition, that is, metaphysics. The only question is whether every *practical* philosophy, as a doctrine of duties, and so too the *doctrine of virtue* (ethics), also needs *metaphysical first principles*, so that it can be set forth as a genuine science (systematically) and not merely as an aggregate of precepts sought out one by one (fragmentarily)”. (MM, 6: 375)

What does he intend to say? Practical philosophy (in particular ethics) has to imitate the philosophy of nature which was already at the stage of a “genuine science”. A “genuine science” in his view was a non-empirical science, grounded on principles of an apodictical certitude, therefore a priori, composed only of Ideas of reason that have no relation to perceptions. “As *proper* natural science therefore requires a pure part, on which the apodictic certainty that reason seeks therein

can be based. [...] *Properly* so-called natural science presupposes, in the same place, metaphysics of nature”¹⁶ (469). The “metaphysical principles of the natural science” belong to the pure part of the natural science and are ordered according to the categories’ titles (since “the schema for completeness of a metaphysical system [...] is the table of categories”¹⁷); this means 1) the first metaphysical principles of phoronomy, 2) [...] of dynamics, 3) [...] of mechanics and of 4) [...] phenomenology. From these one derives the a priori principles of Newtonian physics and then one applies the pure physical theory to experience (to the “Newtonian empirical physics”).

Corresponding to this hierarchy, we will have in ethics, I suppose, “the first metaphysical principles of ethics” (ordered following the categories of quantity): these are the couples FUL+FLN, FEI+FH and FA+FKE. From the first member of each couple we may rationally derive, with the help of the second member, the 14 “pure principles of duty”. Finally, these a priori duties are “applied” to assess the maxims in our moral experience, to morally justify political constitutions, or to improve ethical education etc.; in short, to *apply* the theory to an object that exists independently of Kant’s theory.

The *metaphysical first principles of ethics* are formal categorical imperatives that constitute the supreme principle of morality from which a complete system of “pure principles of duty” for man *as such* is “derivable”. They are both formulas for establishing criteria and for extracting procedures in order to derive from SPM the “pure principles of duty” of the human being as such; they make up together the *pure* part of the theory. The genuine science of morals forms a *complete system* of a priori duties ordered by an a priori principle. This is the metaphysical or *pure part* of the theory. Its empirical part includes “applications” which are cases in experience that satisfy this *ideal model*. For instance, anthropology “deals with the subjective conditions of human nature that hinder people or help them in fulfilling the laws of a metaphysics of morals” (MM, 6: 217); this is a *field* of applications (a particular case of application is, for example, the moral assessment of maxims or the development of moral principles in the minds of youth through education, or the building of good constitutions). The a priori and the empirical parts of science have to be treated separately; this explains why Kant could ignore the “applications” and focus instead, almost completely, on the “genuine science”.

In other words, “the method borrowed from natural scientists” consisted in finding those ideal models, invented by the researcher’s reasoning about the possible unobservable structure of physical objects and processes, which might explain the regularities obtained from observations, measurements and experiments. A theory is not a set of true propositions forming a testable axiomatic system, but rather a “theoretical matrix, a set of possible models” having only an indirect relation with the observation data; it is a hierarchy of conceptual structures establishing the *a*

15 I. Kant, *Inquiry concerning the distinctness of the principles of natural philosophy and theology* (1763), in I. Kant, *Theoretical Philosophy (1755-1770)*, Cambridge University Press, 1992, pp. 42-43.

16 I. Kant, *Metaphysical foundations of the natural science*, in I. Kant, *Theoretical Philosophy after 1781*, Cambridge University Press, 2002, p. 1288.

17 I. Kant, *Metaphysical foundations of the natural science*, in I. Kant, *Theoretical Philosophy after 1781*, Cambridge University Press, 2002, p. 1288.

priori conditions of possibility for our empirical moral actions¹⁸. The application relation is in this case the “subsumption” relation between a law of reason and actions in experience. This is not a deductive relation, but rather a functional one.

As I understand it, the *Groundwork* shows similarities mainly with this structuralist concept of theory, not so much with the statement view. In this sense, to propose a theory means to *introduce* a “formal structure” or a “structural predicate”, i.e. a predicate defined by a number of so-called “principles” or “basic laws” which do not need to be justified or “deduced” in some way; they are necessary assumptions which *define* this structural predicate. In a very similar way, Kant takes SPM without any proof, as simply “given”, as a “fact of pure reason”, “because one cannot reason it out from antecedent data of reason” (CPrR, 5: 31). The *applications* of such a theory do not consist in the empirically testable *logical* consequences of its “axioms”, but in the set of conceptual or empirical models that *satisfy* (or are “subsumed” under) the basic laws¹⁹ of the structural predicate. A theory is a formal structure plus the family of its empirical models.

Using an analogy, we can also say that in theoretical ethics we must search for those *a priori* constraints which define a possible morally perfect world, a possible world of *autonomous* rational beings, i.e. beings who are *free* (without freedom of choice one cannot be responsible, therefore imputable, therefore subjected to moral laws) and *self-legislating* (freedom is conceived as a kind of *causality* of the will, therefore it supposes specific causal laws). These constraints are expressed by *one* principle which is supposed to govern the will of each of the holy inhabitants of this world; such an ideal principle *explains* what moral obligation is in our imperfect human world, and, in particular, which are our most general and genuine moral duties. Kant’s ethical theory is an *a priori* structure defined by the supreme principle of morality (the “pure” part of the theory, the “metaphysics of morals”) plus the applications that satisfy the principle (the part of “applied ethics”). Its *a priori* principles and Ideas are “necessary practical presuppositions” under which alone it is possible to “regard commands of reason as valid” (8: 13).

The mathematical root of the “formula of all duty”

As we saw, Kant uses two interrelated meanings of the term “formula” borrowed from mathematics: that of (i) conceptual *model* that defines the conditions of possibility of something and that of (ii) *procedure* for solving the problem if an action satisfies those conditions. Kant disagrees with those moral philosophers who neglect the ethical analogue of the mathematical “formula”, having in mind, of course, the contexts where one speaks about the “*formula* of the supreme principle of morality” (CPrR, 5: 9f): a “formula” is something that guides our efforts to solve a moral problem and does not let us miss it. The *procedural* formulas (like FLN)

18 I. Pârnu, *Posibilitatea experienței (The Possibility of Experience)*, Politeia-SNSPA, București, 2004, p. 62-63.

19 The “basic laws” may be Newton’s principles for the predicate “is a Newtonian particle mechanics”; the “rules” of associativity, identity and inverses for the predicate “is a group”; as well as FUL and FEI for “is a ‘moral world’ of free beings”.

are able to play their role, but they are also related to the basic sense which can be found in the idea of “model”. There are several contexts wherein Kant used the term “Formel” in the sense of proposition which expresses the conditions of possibility of a class of things through their “formula”, which is their *general model*.²⁰ One of the clearest formulations – although a mere analogy – is that of *Reflexionen*:

“The principle or the norm of all analytic propositions is the principle of contradiction and of identity. There is (if I consider both together) no *axioma* but only a formula, i.e., a general *model* (*ein allgemein Modell*) of analytic propositions; for it contains no *medium terminum*”. (*Reflexionen* 4634)

This fragment is about the *formula of analytic propositions* which is linguistically expressed by the *conjunction* of two “principles” or “norms” or *criteria* of analyticity: the principle of non-contradiction and the principle of identity. This conjunction should not be taken as an “axiom” (in a demonstrative syllogism), but as a “formula”, i.e. as a “general model” which stipulates the essential conditions that all analytic propositions must *satisfy*.²¹

If we transfer this idea to the moral case, the “formula” in the first sense should *not* be seen as an “axiom”, i.e. as a synthetic *a priori proposition* evident by

20 Kant seems to distinguish, though not clearly enough, between the *statement* of SPM and its *formula* - which means the rational *model* of all duties “expressed” by this statement; he speaks of “the categorical imperative *and* its formula” as of two *separate* things (G 4: 432 / II 59). Whereas, the “categorical imperative” refers to a proposition, “its formula” refers to a structure-concept (“model”) expressed by that proposition, e.g. to a maximal set of ends in themselves united by two “principles” or “norms” which provide the criteria of the morality of all maxims, or to the synthesis of both of them. Timmermann finds the above phrase “intriguing”. He believes that “the categorical imperative” means an unconditional command as such and “the formula” means “one of the earliest formulations” (“which happens to be the first variant” - FLN (p. 104)). In this case, have we to suppose that Kant, when he specified at II, 59n that he would not repeat for the third time the 4 examples brought forward to clarify (*Erläuterung*) “the categorical imperative and its *formula*”, intended to say that he had been trying to clarify previously the unconditional command and its first “variant”? This is absurd, since its “first variant” (FLN) is also an “unconditional command”; and, *in fact*, he clarified *two* variants: FLN and FH.

21 Look at another fragment in which Kant uses the term “formula” with the same meaning: “The proposition which expresses the essence of every affirmation and which accordingly contains the supreme *formula* of all affirmative judgements runs as follows: to every subject there belongs a predicate which is identical with it. This is the *law of identity*”. The formula of all negative judgements is the *law of contradiction*. “These two principles together constitute the supreme universal principle [...] of human reason in its entirety (2: 294). In the same context he speaks about “the immediate supreme rule of all obligation” and says that its principle is “a *formula* of obligation” (I. Kant, *Inquiry concerning the distinctness of the principles of natural theology and morality* (1764), in I. Kant, *Theoretical Philosophy (1755-1770)*, (D. Walford, R. Meerbote, eds.), Cambridge University Press, 1992). See also CPR, A152/B191.

itself²² from which one could *logically* deduce the moral duties as theorems,²³ but as a “general model of all duty”. This means that the principle of morality has to be considered as a fundamental proposition (*Grundsatz*) which “contains” a *formula*, i.e. contains the conditions of possibility of the a priori duties of human beings as such. The conditions are criteria to be satisfied by maxims in experience. They are not given under the form of a set of qualities a duty has, but as a set of abstract entities that satisfy certain conditions given by some “principles”. This was later called a “structural predicate”. For example, this is the manner the algebraic concept of “group” is introduced. One might say that the structural predicate (“x is a group”), which is defined by three requirements or principles, represents “the general model” or the “abstract matrix” or the “formal structure” for an unlimited set of *models* or particular *applications*, i.e. conceptual or empirical structures which *satisfy* the conditions stipulated by the three principles (in Kant’s language, the *union* of the three principles may be called the “formula” of the predicate “group”). The so-called “structuralist epistemology” (Sneed, Stegmüller, Pärnu etc.) developed much more complex versions of such a concept of *theory*, conceived as a hierarchy of models.

Therefore, when Kant uses the phrase “the formula of [...] all duty” or “the principle of all duty” (II, 41) – i.e. the supreme principle of morality from which all duties are “derivable” – he very probably meant the *general model* of all duty (plus the procedure to derive them). And this is not a mere supposition of mine: Kant speaks himself in terms of “model” when he refers to the “moral world” of holy wills and of holy laws in relation to the world of finite rational beings and their maxims that approximate the first without end (CPrR, 5: 33). Finally, in speaking about “derivation” Kant does not have in mind some kind of simple logical deduction, but a special kind of reasoning,²⁴ guided by some *derivation formulas* (FLN and FH), the outcome of which is the complete classification of the “pure principles of duty”. That the supreme principle of morality is the system of FLU “conjoined” with FEI is also proved by the fact that Kant considers all duties of the human being as such as being derivable from FUL and FEI, as from their “supreme practical ground” (G. 4: 421; 429). When he has approached and developed the *empirical* part of his theory, he changes the vocabulary and speaks about the “subsumption” of the material maxim under the above mentioned principles and, reciprocally, of the “application” of the principles of duty to the maxims in phenomena – therefore he speaks about the relation of *satisfying a model*.²⁵

To conclude, the centrality of the mathematical sense of “formula” has at least four consequences. It shows that the logical-linguistic reconstruction of Kantian ethical theory is not adequate. That the relation between SPM and the 14

22 Since in the *Groundwork* Kant tried to “establish” the supreme principle of morality, it follows that he did not consider it an obvious axiom.

23 There are no logical deductions of this type, nor any instance of the term “sylogism” in the contexts where the “applications” were discussed.

24 During which the *empty* formal duty expressed by FUL is filled with some factual-nomic *content* by applying it to maxims of *human nature*, without losing its a priori character.

25 The pure moral law (the “holy” one) is an Idea of reason “which necessarily serves as a *model* to which all finite rational beings can only approximate without end”; “the progress of one’s maxims toward this model is unended” (CPrR, 5: 33).

duties “derived” in the *Metaphysics of Morals* is not a logical *deduction* relation, but a *sui generis* “derivation” of a classification of principles of duty from SPM. That the moral assessment of a maxim means to be able to verify if that maxim is *subsumable*²⁶ or *satisfies* the a priori duties of the human being as such and, ultimately, satisfies the *model* or the *formula* of SPM. Finally, it shows that the single supreme principle of morality may be defined by more than one “formal law” (a plurality united in the *single* principle of morality).

The levels of Kant’s theory

Kant’s theory has two levels: the a priori and the empirical (G. 4: 388-390). Which are the main “inhabitants” of the first level? The a priori level is that at which we find the supreme principle of morality (SPM), “the sole principle of all moral law” (CPrR, 5: 33), “the formal supreme determining ground of the will, regardless of all subjective differences”; it is a categorical imperative of reason which represents the “general model” of all duties of “human being as such” through the intermediary of the two fundamental principles which define it: FUL and FEI.

At the same level, there are 14 (or 16) “pure principles of duty” or “principles of obligation for human beings *as such*” – derived from SPM (from FUL and FEI respectively). “All imperatives of duty can be derived from it as from their principle” (4: 421, 429) says Kant about both FUL and FEI. The formal “purity” of the 14 duties cannot be *denied*, and although they use terms that refer to the human being, they do so “only to the extent necessary, with reference to *duty generally*” (CPrR, 5: 8), i.e. only to some universal – nomic – characteristics of human *nature*. They are rather *a priori* principles albeit not *pure* ones. They represent a complete classification of the a priori duties for man *as such*, a kind of *a priori paradigmatic applications* of SPM; we are not speaking here about the “visible” man, but about an abstract entity, the *human nature*, or the “human race” defined only in terms of *necessary properties*. We are still in the “pure” part of the theory.²⁷

26 “Subsumption” is a kind of “derivation” of an action or of a duty from the practical objective principle. In practical philosophy Kant speaks about the “derivation” of a maxim “by subsumption” to the principle, which is the same as “applying” that principle to actions in experience (II, 32, MM: 237). This means putting them *in agreement* with the principle (5: 68). This agreement is asymptotic. To *subsume* an action *under* a law is not the same as to *deduce* it from that law. The *locus classicus* of subsumption is the subsumption of intuitions under pure concepts of understanding. To be able to subsume them, they have to have something in common, to be “homogenous”. But they are not. Therefore a third element is added, the *schema* of imagination which has *both an intellectual and an empirical side*. The subsumption of the intuitions to the categories is equivalent to the *application* of categories to intuitions. Similarly, the *subsumption* of a maxim under SPM is equivalent to the *application* of SPM to that maxim. But the laws of freedom are not homogenous with the maxims in the phenomena, therefore a third element is added: the “type” of the moral law, or the *Ideal* of the kingdom of ends – which are two-sides devices: an intellectual and an empirical one. This makes ethical “judgement” possible.

27 “To cognize something by reason only” is tantamount to “cognizing it a priori” (this is the “metaphysics of morals”).

To derive the 14 a priori duties we have to suppose beforehand the relation of *analogy*, in particular the analogy between the laws of nature and the laws of the will. Although they have different natures, they are identical as concerns the *form*: strict universality. This type of analogy is present as a kind of background for the relation between FUL and FLN and justifies the sudden introduction of FLN as a distinct formula (G, 4: 421). To “derive” the human duties one uses the concept of analogy as a “proportion of concepts”:

“In philosophy, however, *analogy* is not the identity of two quantitative relations [as in mathematics] but of two qualitative relations, where from three given members I can cognize and give a priori only the relation to a fourth member, but not this fourth member itself, although I have a rule for [...] seeking it in experience and a mark for discovering it there”. (CPR, A179-180/B222)

In other words,

The laws of nature (L_N) are to the laws of the will (L_V) in a relation
which is the same
as the relation
between $L(m)$ and $U(m)$,
i.e. although different, their laws have the same *form*.²⁸

How could we know that a generic²⁹ maxim of human beings as such, m , has moral content, i.e. may become a law of freedom ($L(m)$) insofar as we don’t have cognitions about the intelligible $L(m)$? We cannot show directly how this is possible, but only indirectly, with the help of the concept of “law of nature” and its analogy to the law of freedom. Laws of the will and laws of nature are qualitatively different, but they have in common, nevertheless, the property of strict universality. Therefore, because we have cognitions about the laws of nature, we can say that if maxim m can be universalized as if it were a law of nature, $U(m)$, it can become a law of freedom because it has the same *form* as the law of freedom; therefore, it *can* have moral content, it is morally *possible*. If the maxim doesn’t pass the test of “the form of law of nature in general” (5: 69), I mean it is not universalizable as a law of nature, therefore, it cannot have the *form* of a law of nature, identical to that of a practical law, and so it is “morally impossible”. Consequently, its negation is a duty. The failure to pass the test is not the symptom of a *de facto* incapacity, but one which concerns the *impossibility* of finding a place for the universalized maxim as a law of nature within a possible universal natural legislation.

²⁸ $U(m)$ is the universal form of the maxim m as if it were a law of nature. $L(m)$ is the law of the human will having maxim m as a content.

²⁹ I’ll call a “generic maxim” a maxim that does not refer to some *contingent* empirical facts about human beings, but to some *universal* or necessary properties of man as a species. Otherwise, if the maxim would be dependent on some contingent ends, it should be relative to those contingent conditions and could certainly not be from the very beginning a moral law. The generic maxim expresses necessary truths about finite rational beings.

The “application” of the pure part of this ethical theory to the actions in experience should be distinguished from the “derivation” of a priori duties. The first operation belongs to the empirical part of the theory, the second to the pure part. The first refers to the application of the 14 a priori principles of duty to *any* kind of material maxim, the second concerns the derivation of these a priori principles of duty using some special kinds of maxims. The standard empirical application is “anthropology”. The application tool is not a rational, formal categorical imperative, as FLN and FEI, but a “rule of the power of judgement”, the deliberative “faculty of *subsuming* under rules, that is of distinguishing whether something does or does not stand under a given rule”; this is a deliberative “peculiar talent” that each man has and which may be “sharpened” by training and experience (CPR, A133/B172); it is presented in some detail in the “typic” chapter of the CPrR.³⁰ While in the first transition the test of universalizability checked whether it is possible to universalize the maxim as a law of nature in general, the law of nature having the same form as the law of freedom, in the second transition we check whether the universal form of the maxim imagined as a law of nature is compatible to a given *type* of a given moral law which backs the 14 duties of the “human being as such”. Some other results of the application are moral “practical precepts”, having the form of a hypothetical imperative, which are not laws, but *moral* “customs” (and consequently have a “subjective necessity”) validated by the theory (5: 12).

The differences between *derivation* and *application* are remarkable. *Derivation* of the human duties as such is an a priori procedure; the outcome of the derivation is a duty for “human beings as such”; the procedure is “by reason alone” although it uses the analogy; the starting point for this a priori procedure is constituted by the two formal principles that compose SPM. On the contrary, the *application* of the pure part of the theory to experience is not an a priori derivation process, “cognized by reason alone”, but a deliberative activity of the human “power of judgement”. The outcome is a (revisable) moral assessment of *any* kind of material maxim; the process consists of a probable deliberation about “subsumption”; the starting point is the 14 a priori duties, supplemented by their “types”.

The *principles of application* are procedures *similar* to FLN and FH since the criteria of morality did not change, but, as procedures, they are much more lax. What we have as “principles of application” is a system of “*rules of judgment* under laws of pure practical reason” meant to appraise the maxims (CPrR, 5: 69). They don’t have the form of a categorical imperative, being rather deliberative procedures. They are “rules of (the power of) judgement” able to help us to *decide* (to approximate) the *subsumption* of an action under a law of the human will (CPrR, 5: 70). They also use analogies, definitions, casuistic judgements and so on. They are the intermediate device that assures the “transition” from the *a priori* laws of freedom to the *empirical* actions in experience. A *specification* procedure is also used starting from duties and definitions; the result may be a (conditioned) “special duty”.

³⁰ In the second transition we have the so called “rules of the power of judgment under laws of pure practical reason” (CPrR, 5: 69). In the first transition we used some schemes of *reasoning* to derive a priori a number of moral a priori *laws* (categorical imperatives) for human beings *as such* from an a priori ground, FUL and FEI (categorical imperatives).

How many formulas?

Strangely enough, the *Groundwork* doesn't help us to know exactly *how many* formulas “of the same law” Kant had in mind. Several. Why does he need *several*? The commentators have counted very differently. Kant speaks of three formulas, but it is not clear to which he refers. Others have identified five. Höffe takes FUL as the “basic formula” and FLN, FH and FKE as “secondary formulas”, all being intensionally equivalent and reducible to one. Timmermann considers that we have four formulations as well: a *main* formulation (FUL) and three “popular reformulations” (FLN, FH and FA) (I have never understood what a “popular” reformulation has to do with a *metaphysics* of morals).

I will show in the pages that follow that the *single* supreme principle of morality is a system of three *couples* of principles, two couples of principles being “united” in a third one. The number *three* results for reasons of similarity with the “progression of categories” (of quantity) since the system of theoretical categories is the a priori classification ground of the principles of every science.³¹ There are three categories of quantity and the third is the synthesis of the first two. A similar case is to be made regarding the equally debated topic of formulas. Another thesis I lay claim to is that the formulas are not reciprocally reducible and that the controversy around them stems from the “pure part of the ethical theory”, from the metaphysics of morals, where the “derivation” of the a priori duties for man *as such* takes place.

Let us start with Kant himself, rather than his commentators. How many principles are there? Kant speaks of three principles which represent the ground of every duty (G. 4: 431); at G.4: 436 he refers to them using the expression “the above three ways of representing the principle of morality”. At the end of this paragraph he recalls the three “concepts”. Which could be the *set of three*? Kant has already presented three ways of representing the principle of morality in an imperfect being at (4: 431), the only case when the number *three* is mentioned: FUL, FEI, FA. Among these, there is a relation of synthesis: one of them “unites” the other two in it. But also “among them” (about which “them” does he speak?) there is a group of formulas which are *more apt to bring “an Idea of reason nearer to intuition (in accordance with a certain analogy)”*. One may easily see that among the three principles mentioned above, none is nearer to empirical maxims, since all have the same theoretical status: they fix the criteria which every duty has to satisfy.

Therefore, which are the formulas that are ‘nearer to’ moral experience? The above remarks (i.e. “in accordance with a certain analogy”) indicate the FLN; but immediately after formulating this suggestion, Kant gives a set of three formulas of the same kind as FLN (i.e. FLN, FH and FKE) (IMM, 4: 436, II, 72). The first two were already “applied” to the four maxims in *Groundwork*.

In introducing them, he says: “among them” (i.e. apparently among FUL, FEI and FA) there is a sub-set which is able to “bring an idea of reason closer to intuition (by a certain analogy) and thereby to feeling”, but it is obvious that the formulas of the second set are not situated “among” the formulas of the first set! The only

³¹ “The schema for completeness of a metaphysical system [...] is the table of categories” (MFNS: 474).

way of making sense of the fragment II, 72 is by supposing the existence of a tacit “conjunction” of the formulas arranged in the two rows as follows: FUL+FLN, FEI+FH³² and FA+FKE³³. Now, we can say that the three *couples* are “the three ways of representing the principle of morality” although “there is a difference *among them*”, the second row (FLN, FH, FKE) more closely resembling maxims and cognitions. The first row of categorical imperative formulas govern the will of human natural beings and are the counterpart of the noumenal principles. The second row gives the *procedure* through which we can derive the duties of the human being as such from the principles of SPM and some generic maxims. The first row of formulas tells us what criteria an action has to satisfy to be the duty of a human being *as such*. The second row of formulas tells us how to *establish* whether a maxim satisfies these criteria.

The relation between the members of these couples is similar to that between the two faces of a coin: we have only *one* coin which can be seen from two distinct perspectives. From one direction it is a *model* of every duty and from the other direction it is a derivation *procedure* of the duties of human being *as such* guided by the above mentioned criteria. This indicates that the meaning of “formula” is that of “model” which defines a priori the criteria of the duties of man *as such*, supplemented by a specific “guide” which does not allow you to commit mistakes in selecting the maxims which satisfy those ideal criteria. The next fragment supports this interpretation: the “formal” categorical imperatives like FUL and FLN “only affirms what obligation is: Act upon a maxim that can also hold as a universal law” (this sets up an ideal criterion of duty). “But you can *know* whether this principle (a maxim – V.M.) also holds objectively only in this way”: your reason has to subject the maxim to the “test” of universalizability (MM, 6: 225). These two sides of the principle are an inseparable couple.

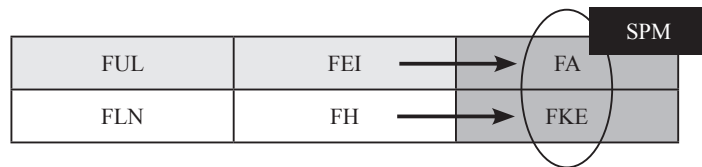
We can see now that the procedural formulas are not simple “reformulations” of the criterial formulas, but another type of formula, expressing a derivation procedure for the case of the maxims that are necessary to the human being *as such*. It now

³² Usually, commentators do not distinguish between FEI and FH. I believe Kant does. When he speaks about “the principle of every rational nature in general as [an] end in itself” (I mean FEI) he claims that this is a priori and “applies to all rational beings in general, and no experience is sufficient to determine anything about that” (4: 431). Therefore this principle cannot be a *test*. Its formulation could be: “All rational beings stand under the law that every one of them ought to treat itself and all others never merely as a means, but always at the same time as an end in itself”. This is a principle in the “Ideal” of the kingdom of ends (4: 433). On the other side, FH refers to the *human* being and his “humanity” as a “limiting condition” of empirical ends; it is a *procedure* which has to work on concrete maxims: “we will see whether this (the content of the formula of humanity) can be accomplished” (4: 429).

³³ The formal principle of all duty will be formulated as follows: If you want to act morally, you ought to “act only in accordance with that maxim through which you can at the same time will that it becomes a universal law” (FUL), practically given by you “ought to act as if the maxim of your action were to become through your will a universal law of nature” (FLN). This is a two-faceted principle: if you want to know if in a particular case the *criteria* of all duty (FUL) are satisfied, you ought to *do* what FLN requires.

becomes intelligible what it means to say that the three formulas which “represent” the principle of morality, “are at bottom” three “formulas of the very same law” and that there is “among them” a sub-set which is nearer to intuition. This means that each of the criterial formulas (FUL, FEI and FA) “can also be expressed” by procedural formulas (FLN, FH and FKE) – because they are *one and the same* formulas; but the latter row is nearer to intuition just because they are procedural formulas (the same relation is expressed in the following contexts: FUL “can also go” as FLN and, respectively, the idea of autonomy “leads to a very fruitful concept depending on it, namely that *of a kingdom of ends*” (4: 433)).

But what are we to make of the fact that six, previously separated, formulas now seemingly converge into only one (the “single” supreme principle)? In fact, there are six formulas *in* one. About the relation between the formulas of each row we are told that it is similar to the “progression” of the categories of quantity, i.e. one of them (of course, the third one, FKE) “unites the other two in it”. The relation between these formulas is immediately transferred to the formulas in the first row in virtue of their coupled nature. I propose to accept the conclusion that the supreme principle of morality as a model for every moral duty is the couple of formulas: FA+FKE. They are in fact only one principle having two faces.



What do the categories of quantity tell us? That the “plurality” is derivable from “unity” – this means that unity is a necessary condition of plurality. A “plurality” is a “multitude” united by a universal property or law. A similar relation is supposed to take place between the corresponding formulas. Since “plurality” supposes “unity”, the second formula must be “derivable” from the first: i.e. FEI is supposed to satisfy the condition of strict universality (in the domain of “all rational beings as such”) – which is the condition required by FUL. This is the relation to which the much debated phrase of G. 4: 437 refers: FUL “is fundamentally the same” with FEI (however, not completely the same since they are in fact two): the moral maxim’s *universalizability* condition requires that its validity is met and recognized by all rational beings as such; this is fundamentally the *same* as FEI’s condition: the maxim’s *compatibility* with all rational beings as such which serve as their universal “limiting condition”. This is, perhaps, the reason why FEI + FH is the most used in derivations.

The phrase “one of which *unites* the other two in itself” refers to the relation between the third category and the first two: totality is a plurality that cannot be but unitary. Reformulated in terms of formulas: the necessary condition for a moral maxim to harmonize itself with the legislation of a possible realm of ends as a realm of nature (cf. FKE) is to include subjective ends compatible with every rational nature possible (cf. FEI), on the ground that the maxim is strictly universalizable

(could be willed by every rational nature possible (cf. FUL)). So, both the formulas that give the criteria and those that give the derivation procedures belong to the metaphysics of morals (the “pure” part of the theory). Kant’s discussion on the “progression” of categories belongs to this pure strand too since it is at the level of the metaphysics of morals that one establishes³⁴ the *theoretical criteria* of morality for all rational beings as such. Here we obviously have two *kinds* of formulas: the formulas that *constitute* SPM and define its Idea (the structural concept of an [ideal] “moral world”, absolutely autonomous): FUL, FEI and FA. As Kant says, these are “formal laws” which don’t tell us what *to do*, but “explain [to] us the concept of duty” and “what obligation *is*” (CPrR, 5: 64-5) (II, 57). Then, we have the principles of derivation (FLN, FH and FKE). These procedural counterparts of the first type of formulas make us “*know* whether a given [subjective] principle [maxim] also holds objectively” (MM, 6: 225). Kant’s test is, therefore, a system of tests, namely, FLN and FH, united in a third one (FKE) if we were to respect their systematic “progression” considered to be similar to that of the *categories of quantity*. But the relation of categories is a “synthesis”, which is not a simple “union” of the first two categories in the third. The third is a *sui generis* category, which exists by itself; this fact explains why the third category is not applicable where the first two are.

An error we usually commit is to treat the relations between the categories of quantity and those between the corresponding formulas as identical; it is rather a *similarity* relation (“a progression happens here *as through* the categories”) (4: 436). What is a “synthesis” in the first case, may be a “union” *proper* in the formulas case (4: 436), similar to the “union” of the two logical principles of analyticity (we “consider them *both together*” and this *union* of them forms a “general model” of all duty) (Refl. 4634). As a matter of fact we can find such a “union” of principles in the following formulation of FKE:

(FKE) “Every rational being must act as if he were by his maxims at all times a lawgiving member of the universal kingdom of ends. The formal principle of these maxims is, *act as if your maxims were to serve at the same time as a universal law* (for all rational beings) [FLN]. A kingdom of ends is thus possible only by analogy with a kingdom of nature (4: 438). [...] The rational being, as an end in accordance with its nature, hence as an end in itself, must serve for every maxim as a *limiting condition* of a merely relative and arbitrary ends”. [FH] (4: 436)

We can easily recognize FLN and FH within FKE. It should be mentioned that the correct label for FKE is the “formula of the kingdom of ends *in analogy with the*

³⁴ “One establishes” is only a manner of speaking because they cannot be theoretically deduced, nor empirically illustrated as Kant hoped in *Groundwork* III, by attempting an a priori “deduction” of SPM. The Idea of SPM appears to our moral conscience with the obvious force of a particular “fact”. The SPM is rather a “fact of reason”, identical to the consciousness of freedom or of the autonomy which we all have (CPrR: 31, 412, 414). Therefore, “the moral law is *given* to us as a ‘fact of reason’” (CPrR: 47). It can’t be demonstrated in any way.

kingdom of nature". Otherwise, FLN doesn't make sense. In Kant's view FKE is applicable through its two components: he applies the test twice in the *Groundwork*, first FLN and second FH, but he doesn't add the third test, FKE, because it seems to him to be redundant: in fact, it is useless because it "can serve for the same end" (i.e. [FA+FKE] does the same job as FLN and FH) (4: 432n). However, FKE is not abandoned. Therefore, everywhere we shall see FLN and FH actually used in a priori derivations of duties as such (as in MM, for instance), we have to suppose the presence of the frame-conditions stipulated by FKE.

To conclude, as Kant explicitly claims, there is only *one* SPM, but it has a complex structure. This principle is expressed in an imperfect human being by a formal categorical imperative (FA) plus its procedural counterpart (FKE) which helps us to determine whether a maxim belonging to a human will *as such* satisfies the conditions stipulated by FA or not. These ideal criteria are not derived, but introduced as a "fact of reason" by two principles: FUL and FEI which define the structural-Idea of the "moral world" of autonomous beings. To introduce the theory is tantamount to introducing this structural-Idea. Every action-type that satisfies these criteria through its maxim may be an a priori duty of human being *as such*. The two principles (FUL and FEI) that enter together into the composition of FA are necessarily associated with procedures able to determine *whether* a maxim satisfies or not the criteria (FLN and FH).

The 14 a priori duties derived from SPM in the *Metaphysics of Morals* are then *applied* to actions in experience (here we obtain the "corollaries" of these a priori duties). This time around, the application principles are not the categorical imperatives used to "derive" the a priori duties, but "rules of judgement" belonging to the intellect and able to mediate between reason and experience.

The "principles of (empirical) application" are distinct in FLN, FH and FKE (although they may be *similar* since the criteria of morality remained unchanged). They are, however, "rules of the power of judgement" meant to "subsume" actions in experience to the moral laws. The application procedure seems, therefore, to be a *deliberative* process with verdicts which are always revisable. Unfortunately, Kant did not develop the subject.

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On Toleration, Charity, and Epistemic Fallibilism

Mircea DUMITRU

In this paper I examine some presuppositions of toleration and pluralism and I explore two models, viz. a deontological and a consequentialist model respectively, which could support the view that rational agents should act in a tolerant way. Against the background which is offered by the first model I give two arguments in favor of the view that people are better off and more rational if they act in a tolerant way. The first argument draws upon a *principle of charity* which one usually makes use of in philosophy of mind and philosophy of language but which could equally well work with regard to this foundational issue in ethics and philosophy of action. The second argument is built upon the epistemic *principle of fallibilism* and it is meant to show that from this vantage point acting in a tolerant way is the rational thing to do.

Introductory remarks

It is very likely that the most difficult task of moral and political philosophy has been that of assessing comprehensive views which contradict each other not so much in what concerns the interests expressed by individuals but in regards to what is considered to be of genuine value.¹ If individuals do not agree with each other about what constitutes a good and valuable life, then they would probably end up having dramatic conflicts, even if their actions are motivated by an honest altruistic attitude. Our deep beliefs about what is good and valuable for the life of all the individuals in our own community will prompt us to use the coercive mechanisms of the state in order to achieve the desiderata and the ideals that we share, not only for our own sake but also for those who happen not to share the same vision on the values and meaningfulness of a good life. Of course, those who disagree with us will try to make use of the institutions of the state in the very same way as we do in order to promote and support their own values and ideals. Unfortunately, as we know too well from history, the deep disagreements concerning values can turn into very traumatic conflicts to a much greater extent than mere conflicts of interests.

Now, some of our value disagreements can be resolved through political mechanisms triggered by the public debates concerning the goals of our actions, debates which aim at giving strong support to the policies which promote those goals; however, some other disagreements which go more deeply cannot have the usual political solutions. Here we can include deep religious differences and also certain philosophical beliefs concerning the value and the ultimate meaning of life.

But now, when the regular political mechanisms for acquiring social and political stability fail to produce the outcomes we wish, is there a more subtle mechanism which could keep disagreements within reasonable and non-explosive

bounds? In such cases, people are supposed to learn to live in a rational way with differences, disagreements and profound alterity by refraining from using the coercive mechanisms of the state, with the aim of not placing unreasonable limits upon the freedom and rights of those people who share values which happen not to be admissible by the dominant group in that society. In a few words, what people need in such circumstances is toleration.

Roughly, the whole spectrum of the concept of toleration unfolds against the background of a pair of presuppositions, namely, *the discriminating identification of the alterity (of the other)* together with the decision to *recognize and accept this difference* through an active inter-cultural and persuasive dialogue.

A very promising starting point for our discussion, albeit rather paradoxical, is the model of those social arrangements and constructions which are known as Utopia.² Leaving aside the intricate and rather exotic details of the narratives concerning Utopia, the general model which emerges here is that an aggregation of all the features that we wish a Utopia to instantiate is something inconsistent and unachievable. It is a sad fact of life (which is worth exploring) that it is impossible to achieve simultaneously and continuously *all* that is considered socially and politically good. A perfect deontic and ethical world which complies with all duties, obligations and necessary normative constraints may be a very attractive representation and ideal, but in any rate it is not a world accessible from our own contingent world whose denizens we happen to be. In the best of all possible worlds, toleration has no point. The rationale for tolerant attitudes and behaviors is given by precisely this deontic failure and imperfection and also by the principled impossibility to achieve all the ideals that are to be praised from a political stand point.

But why, after all, are we supposed to act in a tolerant manner in our world which is not perfect morally, deontically, and politically? What is it that makes the imperfection of our own world impose the moral principle of identity discrimination and also of recognizing the alterity? What conceptual and logical connection operates between moral legitimacy and toleration, and between moral illegitimacy and lack of toleration, respectively?

If we go beyond the *prima facie* attractive moral position which urges us to be tolerant and embrace pluralism, then we have to acknowledge that both the conceptual analysis of the deep cultural differences and the cultural and political practice of toleration lead us into paradox. For as Thomas Nagel very aptly puts it,

“liberalism asks that citizens accept a certain restraint in calling on the power of the state to enforce some of their most deeply held convictions against others who do not accept them, and holds that the legitimate exercise of political power must be justified on more restricted grounds – grounds which belong in some sense to a common or public domain”.³

This is where paradox strikes and mystifies our common sense. For why should

1 Cf. Thomas Nagel, *Equality and Partiality*, Oxford University Press, 1991, p. 154-168.

2 See Robert, Nozick *Anarchy, State, and Utopia*, Blackwell, 1974, p. 297-334.

3 Thomas Nagel, *ibid.*, p. 158.

such a limitation placed upon justification be the standard form of grounding political legitimacy? After all, for all those who do not accept that relativism is the most attractive ball game in town nowadays, the arguments *against* this limitation imposed upon the justificatory basis of the political decisions could appear very convincing and as honest as one can get. And they could very well ask themselves in a very proper way the following questions, as Nagel himself does, in order to give the best chance to the argument in favor of liberal toleration:

“Why should I care what others with whom I disagree think about the grounds on which state power is exercised? Why shouldn’t I discount their rejection if it is based on religious or moral or cultural values that I believe to be mistaken? Isn’t that being *too* impartial, giving too much authority to those whose values conflict with mine – betraying my own values, in fact? If I believe something, I believe it to be *true*, yet here I am asked to refrain from acting on that belief in deference to beliefs I think are false. It is unclear what possible moral motivation I could have for doing that. Impartiality among persons is one thing, but impartiality among conceptions of the good is quite another. True justice ought to consist of giving everyone the best possible chance of salvation, for example, or of a good life. In other words, we have to start from the values that we ourselves accept in deciding how state power may legitimately be used”.⁴

Two justificatory models of toleration

Why are we supposed, then, after all to be tolerant? Roughly speaking, we can give two answers which lead to two justificatory models for the virtue of toleration: one is deontological and the other is consequentialist. We will examine them in turn.

The deontological model

According to the deontological model, toleration is a morally necessary virtue whose value does not follow, first and foremost, from certain desirable social and political consequences, regardless of how important those consequences could be for the social and political stability of our institutions. A full grasp of the power of this deontological concept is facilitated by thinking counterfactually. Thus to think in a strong deontological sense that any value or any moral norm whatsoever should be followed in our actions means that we are committing ourselves to those norms even in those contrary-to-fact situations in which, if we acted according to them, we would be in a worse-off situation, compared with the actual state in which we are, than we would be should we not have acted in accordance with them.

From where does this strong moral necessity to be tolerant with those who are different from us in a very profound and (maybe) non reconcilable way follow? First, it is worth emphasizing that the background against which we place this strong moral constraint of toleration consists in a deep asymmetrical relation between those who tolerate and those who are tolerated; but then, again, the same relation,

⁴ Thomas Nagel, *ibid.*, p. 158.

if looked at from a different angle, has a tendency to become symmetrical, which is nowadays one of the main sources of the contemporary crisis of the concept of toleration.⁵ A short explanation will help us here.

Toleration is required by the logic of the communitarian life when there are at least two groups which are positioned asymmetrically with regard to the normative centre of the political and epistemic power. In order to comply with the requirements of toleration the group which controls the power in this asymmetrical relation should accept restraint on its means of coercion, which may very well be rooted in the exercise of its political power, and to build, in an alternative way, strong argumentative strategies which are persuasive and rational (maybe even compelling).

We get thus to the key term for understanding the deontological concept of toleration. This term is “reason”. In his paper on the issue of toleration, Andrei Pleșu gives a very clear and unequivocal account for this position:

“We can be tolerant in the name of reason, establishing that everybody is entitled to have his or her own opinion and that the principle of this right is rationality, but we can also be tolerant in the name of our various failures in acting rationally, recognizing that we don’t have access to the absolute universal truth, and therefore to the ultimate certainty, and thus our claim to be always right has no grounds”.⁶

What is implied here are two principles whose meaningfulness is crucial for a profound understanding of important philosophical principles which are recurrent in many quarters of contemporary systematic philosophy, such as philosophy of mind, philosophy of language, epistemology and ethics: what I mean here is the principle of charity and the principle of epistemic fallibilism.

Toleration and charity

If we follow closely the principle of charity we will see right away how the idea of toleration is essentially contained in our common mental and moral attitudes. To make this clear it is worth pointing to the highly influential remarks that Donald Davidson made on this subject in the context of his seminal discussion in philosophy of mind.

The stance that Davidson defends with regard to the mind-body relation is

⁵ In a very suggestive and illuminating way Andrei Pleșu, in his *Cuvântul* conference, “Toleranța și intolerabilul. Criza unui concept” (in Romanian) (“Toleration and the Intolerable. The Crisis of a Concept”) (published by the journal *Cuvântul*, XI (XVI), no. 2 (332), February 2005, pg. 11-13), brings into discussion the dialectics of the rule-exception relation. What until recently has been tolerated becomes something legitimate today and is questioning the legitimacy of the tolerating instance: “The exception becomes tolerant with the rule, and the rule develops a guilt complex, and thus an inferiority complex in relation to the exception. The exception becomes militant, self-sufficient, and, eventually, discriminatory and intolerant!”

⁶ Andrei Pleșu, *ibid.*

called the thesis of anomalous monism⁷ – roughly the view that there cannot be any psycho-physical causal laws which connect mental phenomena with physical phenomena. One of the crucial premises of this conception is that the practice of attributing intentional stances to individuals – mental states such as beliefs or wishes – is governed by principles of rationality, while the physical realm is not subject to such constraints; hence, as Davidson very aptly puts it, the principle of rationality and coherence “has no echo whatsoever” in the physical theory, which makes impossible any causal connection of the mental phenomena with physical phenomena.

Those principles of rationality warrant that the total set of intentional states that we attribute to a subject, and through which one can interpret and predict her actions under normal circumstances, will be as coherent and as rational as possible. Of course, this does not mean that we will make the unrealistic, and actually false, presupposition that those individuals whose utterances and actions are the object of our interpretations could not have false beliefs. To the contrary, we know that what gives to our beliefs the philosophical bite that makes them theoretically interesting is the fact that they *could* be – and some of them actually *are* – false. The principles of rationality, which govern the attribution of intentional states, encapsulate the idea that “we can, however, take it as given that *most* beliefs are correct. The reason for this is that a belief is identified by its location in a pattern of beliefs; it is this pattern that determines the subject matter of the belief, what the belief is about”.⁸

What follows from this epistemic duty that we have toward others as interpreters of their utterances and actions is that we *should* be charitable in the interpretation of their intentional states and that we should refrain ourselves from attributing to them obviously contradictory beliefs, even when the sentences that they utter are incompatible with the beliefs that we share or even worse, when their sentences have the surface form of a logical contradiction.

Consequently, what is required from an interpreter, in order for us to accept her interpretation, is to come up with an account for the meaning of the sentences and actions of the interpreted individual as coherent and as rational as possible. And when the interpreter fails to produce such a consistent interpretation, it is very natural to blame the interpreter herself for the interpretative failure and not the interpreted person for holding unacceptable and inconsistent beliefs.

To sum up, the principle of charity will be encapsulated within the following thesis: the requirement of rationality and coherence pertains to the very essence of the mind – that is, it is constitutive to the mental in the sense that rationality and coherence make the mind be exactly what it is. And if, *per absurdum*, there were “beliefs” which would escape from the constraint of this principle, then those *sui-generis* “beliefs” could not be considered any longer mental states.

Where does all this lead us in relation to our topic? If we appreciate properly

the force of all those Davidsonian remarks we shall understand why the principle of charity occupies a central place in any serious attempt to explain theoretically how it is possible to understand the others’ utterances and actions in a rational way. Davidson is crystal clear about this:

“Since charity is not an option, but a condition of having a workable theory, it is meaningless to suggest that we might fall into massive error by endorsing it. [...] Charity is forced on us; whether we like it or not, if we want to understand others, we must count them right in most matters. If we can produce a theory that reconciles charity and the formal conditions for a theory, we have done all that could be done to ensure communication. Nothing more is possible, and nothing more is needed”.⁹

Summing up the deontological concept of toleration, the Davidsonian principle of charity requires us to prefer theories of interpretation which minimize the disagreements. This is why making an appeal to charity – and *ipso facto* to toleration – is somehow inevitable.

The current crisis of the concept of toleration erodes this principle of charity which is so generous and it is also fed, in its turn, by a very feeble and incomplete application of it. For, as Davidson rightly emphasizes, “minimizing disagreements, or maximizing agreement, is a confused ideal. The aim of interpretation is not agreement but understanding”.¹⁰

Along the same general lines, Andrei Pleșu, in his essay, is worried by the radical distortion of the meaning of the concept of toleration and he deplores the degradation of the honest dialogue with the other who is substantially “different”, a dialogue which gives genuine substance to the tolerant attitude; and it is this fact – says Pleșu – which “amputates the appetite for knowledge, for the real understanding of the alterity, and which undermines the necessity for having debates”.¹¹

We thus get to the point where we are trapped in a vicious circle which is very hard to get through. For, on the one hand, the genuine debate is cancelled, because we are told in a way which is irresponsible from an epistemic and ethical point of view, that there is no truth to discover and no reasoning to undertake, and on the other hand, conversely, important truths have no echo in us and they are ignored by us – discursive reasoning becomes weak and is degrading fallaciously because the authentic debate is cancelled.

Toleration and fallibilism

We also have to be tolerant due to our epistemic fallibilism: we have no access whatsoever to absolute truth and certainty in what concerns those things which are of

7 See Donald Davidson “Mental Events” (1970), “Psychology as Philosophy” (1974) and “The Material Mind” (1973), in Donald Davidson *Essays on Actions and Events*, Clarendon Press, Oxford, 1980, pp. 205-259.

8 Donald Davidson, “Thought and Talk”, in *Inquiries into Truth & Interpretation*, Clarendon Press, Oxford, 1984, p. 168.

9 Donald Davidson, “On the Very Idea of a Conceptual Scheme”, in *Inquiries into Truth & Interpretation*, Clarendon Press, Oxford, 1984, p. 197.

10 Donald Davidson, *Inquiries into Truth & Interpretation*, Clarendon Press, Oxford, 1984, pg. xvii.

11 Andrei Pleșu, *ibid.*

utmost importance for the moral, religious and political life of our own community. Since our own moral and political beliefs that we praise mostly and consider honestly and with some grounds right may be nevertheless wrong, it is reasonable to acknowledge that those who do not share our fundamental commitments are as entitled epistemically as we are, according to their own justifications, to contrary opinions.

The consequentialist model

Now, according to the consequentialist model, toleration appears as a political tool for alleviating dangerous disagreements or tensions which are a threat to the social order. If what we are looking for is a social and political stability compact then it is reasonable to not discriminate and accept things, which otherwise we had strong reasons to disagree with and reject. In short, making a consequentialist calculus we see that there are more numerous reasons by far for being tolerant than for being fanatical and intolerant.

A “paradox” of toleration?

I shall finish by making a short remark on one of the sources of the current pathology of the concept and practice of toleration. This motivates what can be called a “paradox of toleration”: how should we react when confronted with intolerance? What are the limits of toleration in relation to fanaticism and to what is intolerable? Is it possible, and if so is it desirable, to find a rational grounding for accepting what is otherwise unacceptable?

Thomas Nagel also sees the real problem and danger behind this form of unbounded and unreflective toleration when he speaks about the over-exaggeration of positive discrimination, better known today as the affirmative action policy.¹² What’s all this about? Toleration plays, as it were, the role of the middle term between freedom of speech and opinion (according to J. S. Mill, toleration is a necessary product of liberty) and political equality (according to J. Rawls, toleration is logically correlated to equality). It is a real challenge then to keep a dynamic equilibrium between the individual and social justice, on the one hand, and freedom of speech (and opinion), on the other hand. The same kind of problem will occur when we look for equilibrium between norms and whatever deviates from norms or between rules and exceptions. The current tendency is to focus upon, sometimes even to over-emphasize, the value of equality. However, what the political practice of positive discrimination shows, especially when one abuses it, is the difficulty to keep the right balance between equality and liberty: the requirement of equality threatens the requirement of free competition and free choice. If we push to the extreme the norms of positive discrimination we end up on a slippery-slope and we will not be sure any more whether it is not fair that one should always prefer whomever is naturally worse-off than whomever is better-off, having in view a rather abstract and formal representation of the differences for which neither one

has any obvious moral merit. The legitimate worry here is this: if we generalize this criterion for choice, should we not stick to the same logic and whenever we have to make a choice should we not always choose the worse-off, in order to correct her native lack of chance, for which, at any rate, she has no moral responsibility whatsoever?

Thomas Nagel’s remarks have the merit of awakening us from our moral slumber, as it were, and make us become aware that if we go down this slippery-slope we end up at the border of a moral Utopia. If we wish to accept something, which otherwise is unacceptable, we will have to make it be the case that one should produce what is impossible. Well, if this is what we really *wish* or *want*, then we see that we are likely to end up where we began this journey, in Utopia. However, as we already know, in Utopia toleration has no real point or moral merit.¹³

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12 Cf. Thomas Nagel, *Mortal Questions*, Cambridge University Press, 1979.

13 I am grateful to Professor Andrei Pleșu for inviting me to comment publicly his paper “Toleranța și intolerabilul. Criza unui concept” (“Toleration and the Intolerable. The Crisis of a Concept”), which was published afterwards by *Cuvântul*. This kind invitation gave me the input to write a first draft of the paper that I am presenting here. I would also like to thank my colleague, Professor Adrian-Paul Iliescu, for his criticism which helped me to improve the paper. It goes without saying that I am the only one responsible for the contents and arguments that I am putting forward in this paper.

Intuitive Methods of Moral Decision Making, A Philosophical Plea

Emilian MIHAILOV

Ethical theories aim to ground moral judgements or at least to make sense of the moral universe. Kant developed an a priori grounding of moral duties. What one ought to do is what can be willed by any rational being. A rule is moral if it can be willed as a universal law. Mill, on the other hand, focused on the outcome of actions. His utilitarian principle confers moral value to an action in as much as it maximizes happiness and minimizes pain. Both philosophers assume that at least two objectives can be expected from a moral theory: (i) to provide a criterion of the moral good, and, implicitly, (ii) to offer a method for testing whether the criterion of the moral good is satisfied. Thus, any moral theory provides a general framework for moral decision making.

Problems of applied ethics have been approached with paradigmatic ethical theories. These theoretical conceptual frameworks have been applied in a top-down fashion to pressing moral difficulties. Gradually, sceptical voices began to be heard. Mark Siegler signalled the fact that the tradition of philosophical ethics and top-down approaches, which are dominant in medical ethics, cannot claim any real progress in the practice of medical ethics.¹ Siegler's remarks can determine an anti-theory attitude of rejecting the usefulness of conceptual frameworks, even though Siegler himself does not sympathize with such attitude. I believe that more important than the debate between theory and anti-theory, are the assumptions behind this sceptical voice.

Philosophical and legalistic approaches did not manage to accomplish major progress in the practice of medical ethics because they do not capture the whole story of moral decision making, the needs and expectations of those confronted on a daily basis with situational constraints. Visible progress also starts from the micro level of parties who constantly deal with difficult moral situations. Extensive progress is hard to come by since the empirical ethics of medical practice are underdeveloped. The real expectations of doctors and patients consist in having a clearer picture of what is happening and how to proceed in a familiar manner. They are the *hot spot*, the ultimate beneficiary of disentangling moral difficulties. Here, it is necessary for tools of moral assessment to be *in hand*. Though moral philosophers have a tendency to focus on general traits, in the context of the practice of medical ethics the diversity of moral relevant factors and the intuitive aspect of moral assessment is in the forefront. Therefore, Siegler's presupposition is that the needs and expectations of those who constitute the critical mass of the practice of medical ethics are far too ignored.

¹ Siegler, M., "Medical ethics as a medical matter" in R. Baker, A. Kaplan, L. Emanuel, S. Latham (eds.), *The American Medical Ethics Revolution*, John Hopkins University Press, 1999, p. 178.

Taking into consideration the needs underlined above, one faces the challenge of providing intuitive methods of enhancing moral judgement in the daily practice of medical ethics or any other field. Intuitive methods are simple procedures by which an agent evaluates the morality of an action with ease and in a very short period of time. Intuitiveness is provided by the speed and ease with which normative contents come to mind. The aim of this paper is to argue that intuitive methods of moral decision making are objective tools on the grounds that they are reasons-based. First, I will conduct a preliminary analysis in which I highlight the acceptance of methodological pluralism in the practice of medical ethics. Here, the point is to show the possibility of using intuitive methods given the pluralism framework. Second, I will argue that the best starting point of elaborating such methods is a bottom-up perspective. Third, I will address the worry of subjectivism. Under the influence of certain rationalist positions² and recent developments in cognitive science and moral psychology,³ one might think that intuitive methods of moral decision making are essentially subjective and emotion based. If moral intuitions are the result of emotional reactions and intuitive reasoning is emotionally driven, then there are reasons to believe intuitive methods are subjective and relative to particular psychological constitution. Against this picture, I will argue that intuitive methods of moral decision making are essentially reasons-based. A Wittgensteinian approach will show that intuitive methods of moral decision making are conceptually linked with criteria of morality.

Methodological pluralism

In the field of bioethics, broadly construed, there is a growing consensus that ethical theories do not have a straight forward application to concrete moral decisions. The road from abstract moral principles to particular moral decisions is paved with intermediary steps, at least concerning the specificity of moral content and the scope of principles. The function of intermediary procedures is to grasp the complexities of deciding on particular cases. I will discuss only the two most popular which are usually considered in opposition to each other because of the different justification and normative presuppositions. Principlism and casuistry are the most influential methods of moral decision making in medical ethics, and often the question arises of which one to choose.

Beauchamp and Childress reject the traditional models of moral justification (top-down and bottom-up) and argue for a coherence criterion inspired by Rawls' methods of reflective equilibrium.⁴ Through a process of deliberation, one is supposed to pursue a reflective equilibrium between general principles, rules, rights,

² See Mureşan, V., *Fericirea, datoria şi decizia etică*, University of Bucharest Press, 2010.

³ See Greene, J. D., Sommerville, R. B., Nystrom, L. E., Darley, J. M., Cohen, J. D., "An fMRI Investigation of Emotional Engagement in Moral Judgment", *Science* 293: 2105-2108, 2001, and Haidt, J., "The Emotional Dog and Its Rational Tail: A Social Intuitionist Approach to Moral Judgment", *Psychological Review*, 108: 814-834, 2001.

⁴ Beauchamp, T., Childress, J., *Principles of Biomedical Ethics*, Oxford University Press, 2001. See also Rawls, J., "Outline of a Decision Procedure for Ethics", *The Philosophical Review*, 60.2: 177-197, 1951.

on the one hand, and moral intuitions, virtues, beliefs on the other hand. When there is a conflict between different normative reasons, assessing what one ought to do is a reflective process of justification through which a certain moral perspective gains “weight”. With regards to normative presuppositions, principlism assumes a normative framework based on four moral principles extracted from common morality. These principles are central to the practice of medical ethics: the principle of autonomy, the principle of benevolence, the principle of non-maleficence and the principle of justice. Principlism conceives these principles as *prima facie* principles, that is, they are not absolute. A principle can be justifiably overridden by another in some circumstances, and there is no hierarchy among them.

On the other side, casuistry has a much longer tradition, beginning with Aristotelian ethics. What is specific to casuistry is the bottom-up justification. It starts from moral judgements about particular situations and afterwards formulates more general recommendations. The moral solution for a particular dilemma is generalized to similar situations. Casuistry guides a moral solution reached in a case to other cases on the basis of similarities and differences. If new cases resemble far enough a paradigmatic case, then it is justified to apply the paradigmatic moral solution. If this is not the case, then one must find a different paradigmatic example. Casuistry need not assume an *a priori* normative framework. It just happens to find in moral experience paradigmatic cases and reason from them by analogy. The moral pedigree of these exemplary cases represents the source of authority for moral decisions. Paradigmatic cases are not timeless. This is why there are precedents. Casuistry is rather an *a posteriori* endeavour. It just looks for paradigmatic cases in our moral practice which represent the basis for moral arguments and have a decisive impact on moral decisions.⁵ Problems arise when two paradigmatic cases compete with each other. Social and cultural history can successively reveal significant clarifications that can solve such difficulties. The advocates of casuistry believe that the cultural context sheds light on what paradigmatic moral solution is to be applied.

Frictions have emerged between the two approaches to moral decision making. The supporters of casuistry are protesting against the “tyranny of principles”⁶. There is a dynamic of moral judgement that is not properly expressed by principles. Principlists warn that, without a stable framework of principles, there is no control on moral judgements and no prevention against prejudiced social conventions. Basically, “casuistry is a *method without content*”.⁷ Despite the fierce debate and methodological rivalry, both camps gradually began to accept methodological pluralism. Jonsen explains that the moral arguments, which are internal to paradigmatic cases, have the form of moral maxims and that the general moral principles, so often applied to public moral debates, are not so different from the former.⁸ Paradigmatic cases embody moral maxims highly similar to moral

principles. In this way, casuistry is not a fundamental alternative to principlism. Beauchamp considers that casuistry need not be a rival to principlism because paradigmatic cases are often the decisive source of authority for moral assessment.⁹ Principlism and casuistry can co-exist, both on normative content and justification issues.

Beauchamp admits that there “there is no reason to suppose that moral philosophy or methods of specification supply the only way or the best way to treat a case. From this perspective, there may be no single right solution to the problems presented in a case”.¹⁰ For this reason, methodological pluralism has become a social fact in the practice of medical ethics. While methodological monism might still be defended philosophically, it is highly impractical to shape a practice according to one single ethical procedure or theory. Since there is no consensus, and might not be one, about which is the true theory or procedure, monism will always face the question “why this procedure and not the other?” Given that methodological pluralism has made its way into the practice of medical ethics, intuitive procedures can get a piece of the methodological cake.¹¹

Starting point

The question to be answered now is where one starts with drafting intuitive methods: will one consider ethical theories the starting point and by a process of simplification and customization arrive at simpler and intuitive forms or one will start from common morality, understood as the practice and experience of ordinary moral judgement?

The first strategy is suggested by the standard picture which can be found in applied ethics handbooks. Simple forms of classical ethical theories are applied to pressing moral issues such as abortion and euthanasia. For didactic reasons, the theoretical structure is simplified and applied to particular cases in order to facilitate the understanding and usage of abstract moral concepts. Under the influence of this picture, it has been proposed to simplify Kant’s ethics, utilitarianism and virtue ethics in order to deliver methods which are easy to use.¹² Second, there is the argument that it is not just about the intuitive character of simplified ethical theories. Moral objectivity is also at stake. If the starting point is ethical theory, then the objectivity of intuitive forms of moral decision making is preserved. Although simplified versions of ethical theories might not be as intuitive as one expected, at least objectivity is conferred upon them. This concern is understandable since we do not want arbitrary moral decisions and if this is the case then this strategy is appealing. However, this kind of reasoning assumes that ethical theories are the only

Ethics Journal, 5.3, 1995, p. 246.

9 Beauchamp, T., “Methods and principles in biomedical ethics”, *Journal of Medical Ethics* 29, 2003, p. 269.

10 *Idem*.

11 I leave as an open question the aim of determining more precisely when and how intuitive methods are to be used.

12 Swinton, L., “Ethical Decision Making: How to Make Ethical Decisions in 5 Steps”, *Mfrou.com*, <http://www.mfrou.com/ethical-decision-making.html>, 2007.

5 Jonsen, A., Toulmin, S., *The Abuse of Casuistry*, University of California Press, 1988, p. 306.

6 Toulmin, S., “The Tyranny of Principles”, *The Hastings Center Report*, 11.6: 31-39, 1981.

7 Beauchamp, Childress, *Principles of Biomedical Ethics*, p. 395.

8 Jonsen, A., “Casuistry: An Alternative or Complement to Principles?”, *Kennedy Institute of*

source of moral objectivity and reasons for what we ought to do. I will address this concern later in the paper.

The error with the first point is the confusion between a pedagogical approach to applied ethics and actual moral decision making.¹³ In order to be applied, general moral principles need not be simplified or made trivial as in the case of academic ethical training. Moral principles do not need to be turned into trivial prescriptions. We'll get better guidance in the practice of moral assessment if moral principles are "used artfully as perspectives, not rules, including particular lenses from which cognitive orientations and attitudes derive".¹⁴ Understood as such, to apply a moral principle means to approach a moral issue from a *certain* moral point of view. Not only moral psychologists make the case that a moral principle gives us a cognitive perspective,¹⁵ but also philosophers. For example, Thomas Hill Jr. explains that his project of reconstructing Kant's ethics in order to tackle the moral implications of terrorism is not based on the conception that one needs to draw logical conclusions from moral principles. There is no sharp line between permissibility and impermissibility when assessing the problem of terrorism. Rather, one should try to see if Kantian ethics can provide a reasonable and coherent perspective to approach problematic cases. Hill does not want to bring to bear the Kantian abstract principles in an intuitive form in order to derive conclusions for particular cases. His aim is to extract a perspective which sets the power lines of moral consideration.¹⁶ A Kantian principle offers an optic through which one sees the relevant moral facts from a *certain* angle. Ethical theories might be best suited to being applied if we take them to be "lenses" of moral thinking, not trivial prescriptions or procedures. If we want to have full use of an ethical theory, it might be best not to simplify it so as to make it intuitive.

One might object that ethical theories do contain and refer to common moral intuitions and beliefs and often we use moral intuitions to test the plausibility of ethical theories. The reply is obvious. If ethical theorizing uses moral intuitions and common moral beliefs, why not start with them directly. Kant claims that the categorical imperative as the supreme principle of morality is already operational in ordinary moral understanding, though not in its abstract and theoretical form. Why not use directly the intuitive and familiar form, characteristic of common moral understanding? It seems counter-productive to try making something intuitive which in the first place is resistant to it and ignoring the real intuitive forms of moral reasoning that are functional in common morality.

Often philosophical positions are presented as caricatures. A standard picture

is that philosophical theory ignores how things really are and that in order to solve moral problems it is necessary to apply, almost in a mechanical manner, its conceptual framework. A careful reading shows otherwise. First, we see the distinction between foundational endeavours to ground what ought to be enacted and daily moral decisions. For the practice of daily moral decisions, there is no ambitious requirement to use an entire theoretical device. The main goal of a philosophical investigation is a justificatory one. It seeks to answer what actions should be performed. Most of the time, the practice of moral decisions is about putting in action what is already acknowledged as the right thing to do. Though the argument that ethical theory should supervise this practice can be made, it is not necessary to start with ethical theory. Philosophers do share this reasonable picture.¹⁷

For Kant a philosophical investigation should ground and clarify our moral duties. Nevertheless, in the case of ordinary moral decisions a philosophical intervention is not *ipso facto* necessary because common understanding is able to judge on its own what ought to be the case: "would it not more advisable, in moral things, to leave it with the judgement of common reason, and at most to bring on philosophy to present the system of morals more completely and accessibly [...] but not to let it lead common human understanding away from its fortunate simplicity for practical purposes" (IV: 404).¹⁸ Common moral understanding knows well enough what duties ought to be respected in everyday life, and Kant sometimes acknowledges that it "even becomes subtle [...] referring to what is to be called right" (IV: 404). At this point, I am not concerned with how and when a philosophical intervention is called for, but only with granting that common moral judgement has at least some autonomy in the sense that most of the time it can perform on its own to determine what is the right thing to do.

Similar thoughts are to be found in Mill's *Utilitarianism*. Defending his principle of utility, Mill tries to reject the common objection that in most cases applying the principle of utility at best complicates things. In daily life, we have limited time resources and knowledge. Due to these constraints the requirement to apply a theoretical framework makes things worse. The objection is that, in real life, we do not have the time and knowledge to calculate or determine each token consequence of our actions. Most of the time, we act without conscientiously making a calculus of happiness which is required by the principle of utility. Applying to each token situation the principle of utility, without any special need, will make matters worse. But Mill, as well as Kant, accepts this point. That is why in his reply Mill points out the justificatory function of the principle of utility and demarcates it from "the rules of morality for the multitude" which are functional in the practice of moral decisions: "During all that time mankind have been learning by

13 Richard Hare points out the crude "kind of act-utilitarianism to which all beginner philosophy students are taught the standard objections". See Hare, R.M., *Essays in Ethical Theory*, Oxford University Press, 1989, p. 188.

14 Puka, B., "Moral Intimacy and Moral Judgment—Tailoring General Theories to Personal Contexts", p. 165, in W. Edelstein, G. Nunner-Winkler (eds.), *Morality in Context*, Elsevier, 2005.

15 Kohlberg, L., *Essays on moral development: Vol. 1. The philosophy of moral development: Moral stages and the idea of justice*. San Francisco: Harper & R Press, 1981a.

16 Hill, T. Jr. *Dignity and Practical Reason in Kant's Moral Theory*. Cornell University Press, 1992, p. 197.

17 It might be objected that philosophers do care about the applicability of their theories and about putting them to work in order to solve practical problems. Surely they do, but the issue I'm pressing on is not about the practical implications of philosophical ethics. I just want to point out that philosophers accept some autonomy for ordinary moral decisions without the intervention of theory.

18 Kant, I., *Groundwork for the Metaphysics of Morals*, translated by Mary Gregor, Jens Timmermann. Cambridge University Press, 2011.

experience the tendencies of actions; on which experience all the prudence, as well as all the morality of life, is dependent”.¹⁹

In the practice of moral decisions we do not use, and it may not be desirable to use on each token situation, the theoretical form of moral principles. In everyday life we rely on moral education and the practice of common morality. When faced with dilemmas or highly complex issues ethical theories are called upon, but in many cases common moral judgement works well. Both philosophers would have accepted in principle this reasonable claim.

Richard Hare is the paradigmatic philosopher who argues for a clear separation between ordinary moral judgement and critical moral judgement. His theory distinguishes between two levels of moral thinking: the intuitive level and the critical level. The intuitive level is manifested in everyday life moral decisions. Only when faced with exceptional cases, such as moral dilemmas or normative gaps, one has to ascend to a superior level where a solution can be reached. At the critical level, one decides according to a utilitarian principle. I will not discuss the critical level. I only want to draw attention to Hare’s description of the intuitive level: “The intuitive level, with its *prima facie* duties and principles, is the main locus of everyday moral decisions [...] when we face a moral question, decide it on the basis of disposition, habits of thought[,] moral intuitions (it makes little difference what we call them) which we have absorbed during our earlier upbringing and follow without reflection”.²⁰ Hare’s view is that ordinary moral decisions are the result of implicit moral intuitions and habits.

Relevant for this analysis is not whether the above views describe accurately common morality or moral intuitions, but only the acceptance of the premise that in ordinary moral assessment there is no absolute necessity for “theory intervention”. Philosophers accept that most of the time we can handle moral decisions, independent of ethical theories.

If in many human activities “rules of thumb” have emerged with the goal of facilitating the accomplishment of certain objectives, then why should we ignore the “rules of thumb” of moral evaluation? If there are no reasons to reject the first, then there are no reasons to ignore the second. The best starting point for drafting intuitive methods of moral decision making is the practice of common moral judgement.

Intuitive methods of moral decision making can have the form of methodological questions, considered natural and familiar because one has assimilated them through moral education and practice. The golden rule, do to others as you would have them do unto you, is maybe the most prevalent intuitive method. Besides this, there are other intuitive methods which help us track down relevant moral features. Methodological questions such as “what if my motive for action were made public?”, “what if everybody did that?”, “what if the same thing would happen to me?”, “what would my family have to say about this?” might be good candidates for intuitive procedures. Then again, there might be others. Identifying the exact form and content is a task for empirical investigation.

The main objective of these kinds of methods is to track down the relevant moral aspects of a situation without much deliberation in order to enable an easier moral decision. Of course, the output of an intuitive method can be defeasible. Kahneman’s research shows that there are many ways in which intuitive thinking can lead to poor decisions at least in non-moral contexts.²¹ It is also argued that intuitive thinking leads to systematic errors even in moral contexts.²² Moreover, non-reflective judgement is prone to many biases. For example, moral judgements are made more severe by the presence of disgust,²³ and less severe when the concept of cleanliness is salient.²⁴ Nevertheless, it is acknowledged at the same time that intuitive thinking is “safe” in a variety of cases. The goal of my analysis is to see how intuitive methods work, whether they are actually tracking down moral reasons or are subjective and emotion based. As I said earlier, it is the goal of empirical investigation to identify the exact form and content of moral “short-cuts” or “rules of thumb”.

The stake of intuitive methods is to provide *in hand* solutions to moral decision making in daily practice. Analogous to cognitive psychology where practical aptness is measured in relation with activity that comes in a natural manner for real time situations²⁵, one can measure the efficiency of intuitive methods in relation with a natural easiness that tracks down relevant moral aspects for real time situations.

A philosophical plea

Are intuitive methods tracking moral reasons? Doubts can be raised. The challenge comes from Kant’s critique of the golden rule. In his pursuit of the supreme principle of morality, Kant rejects the golden rule as a possible candidate for the principle of morality:

“the trivial *quod tibi non vis fieri* [...] can be no universal law, for it does not contain the ground of duties to oneself, not of duties of love to others (for many a man would gladly agree that others should not benefit him if only he might be exempt from showing them beneficence), finally not of owed duties to one another; for the criminal would argue on this ground against the judges who punish him, and so on”. (IV: 430, fn.20)

The charge of subjectivism that can be extracted from Kant’s critique of the golden rule has two roots. First, intuitive methods are arbitrary and can generate unsatisfactory outcomes being dependent on contingent and subjective factors. The criminal’s argument against punishment strikes everyone as plain false. The golden

21 See Kahneman, D., *Thinking Fast and Slow*, Farrar, Straus and Giroux Press, New York, 2011.

22 Sunstein, C., “Moral heuristics”, *Behavioral and Brain Sciences*, 28, 531-573, 2005.

23 Wheatley, T., Haidt, J., “Hypnotic Disgust Makes Moral Judgments More Severe”, *Psychological Science*, Vol. 16. No. 10, 2005.

24 Schnall, S., Benton, J., Harvey, S., “With a clean conscience. Cleanliness reduces the severity of moral judgments”, *Psychological Science*, 19, 1219-1222, 2008.

25 Puka, B., *ibid.*, p. 164.

19 Mill, J. St., *Utilitarianism and On Liberty*, Blackwell Publishing, 2003, p. 200.

20 Hare, R. M., *Essays on Bioethics*, Oxford University Press, 1993, p. 18.

rule, according to Kant, generates this outcome because it seems that the criminal's reasoning is based on an arbitrary factor, namely, the fact that he does not like to be punished. The worry pops up immediately: how can one trust the golden rule? Imagine a doctor who asks himself what his fellow colleagues would say about a course of treatment, and by accident his colleagues are extremely paternalistic about this. As such, they would probably say to completely ignore the patient's desires. Moreover, in the spirit of Kant's examples, another possible outcome is moral indifference. Or, consider claims from the neuroscience of intuitive moral thinking. Greene et al. claim that emotional engagement drives people's intuitive moral judgement.²⁶ In the trolley dilemma there is no direct contact. One has to pull a hand lever to switch the tracks in order to save the five people, but in the footbridge dilemma one has to push a fat man onto the track to save them. From a normative standpoint, the fact of direct contact is arbitrary to whether something is to be considered morally permissible or not.²⁷ It should not play a role in determining the moral permissibility of an action. Second, intuitive methods are not theoretically sound in order to be a source of moral objectivity. The golden rule is short on grounding core moral duties, such as beneficence, or duties to oneself, such as cultivating talents and promoting one's health. In comparison with an intuitive method, a philosophical moral principle is supposed to ground all these kinds of duties.

Those who want to attack intuitive methods siding with the first objection also need to accept that even the most influential procedure in moral philosophy can generate morally worse outcomes in its application. Kant's famous formula of the universal law, at least the "contradiction in conception" test, is one example. Kant admits that the egoist maxim not to care about the other's welfare passes the test of universality and, therefore, moral indifference is permissible.²⁸ The moral absurdity is that beneficence is no longer a moral duty since the egoist maxim is permissible, while everybody acknowledges that we ought to help others in need. To solve this difficulty, Kant introduces a new test of permissibility, namely the contradiction in the will test:

"It is still impossible to WILL that such a principle hold everywhere as a law of nature. For a will that resolved upon this would conflict with itself, as many cases can yet come to pass in which one needs the love and compassion of others, and in which, by such a law of nature sprung from his own will, he would rob himself of all hope the assistance he wishes for himself". (4: 423)

One cannot will the maxim of moral indifference as a universal law because it

would be impossible to ask for help in future moments of his life when he wishes for assistance. As Parfit puts it, the contradiction in the will test still does not work because its scope are people who want to be helped.²⁹ This test is not applicable to those who do not want to be helped. Therefore, the maxim of moral indifference can be willed as a universal law by those who do not wish to be helped. Even though Kant uses the term "wish", most Kantians would reply that to will something does not mean to want or wish for something. Certainly, Kant's concept of willing is not desire based, but then we do not have to understand the golden rule in terms of simplistic emotional reactions as I will show.

Nevertheless, let us accept Kant's interpretation of the golden rule. Even so, one can reply that the objection is based on the questionable presupposition that agents who use intuitive methods are morally illiterate. They do not have any moral background or moral sensitivity independent of intuitive methods of moral decision making or ethical theory. If this is the picture of normal agents, then wrong judgements can be formulated even by following ethical theories. An illiterate agent can make bad judgements even though he applies the most solid theory. Consider a doctor who knows all the right rules to follow, but when it comes to how and when to apply them he is illiterate. The "rightness" of the rules does not grant the correct application. It is hard to believe that normal agents do not have any further experience or moral flags to guide and check the application of procedures. Suppose, as Kant does, that the golden rule argument is that the judge does not like to be punished so he should not punish the criminal. And next that a normal agent will apply the positive form of this pattern of reasoning, namely, do to others what you would like others to do to you. One outcome might be this: because I like others to create a stressful environment (it might make me work better), I will create the same conditions for others. Will the agent who arrives at this outcome stop here? If this is the result, then is that it? Will he sincerely believe that he ought to create stressful conditions for others? It is highly implausible. We do not unconditionally accept any outcome. If an outcome conflicts with core moral intuitions then it will be further examined. It is hard to justify the presupposition that we are incapable of realizing when our judgements and actions are clearly trespassing against the boundaries of morality. Normal agents that apply intuitive methods are not morally blind-sided. They have implicit or explicit moral knowledge that supports further guidance. Usually, we can see that something is not right. Intuitive methods do not substitute for moral thinking, they just help it. One should consider them decision aids. This is why the danger of enacting such arbitrary outcomes is exaggerated. Remember that the criminal's argument strikes everyone as odd.

An intuitive method may seem to lack objectivity when compared with universal principles. It must be grounded on a robust theoretical construction which covers a wide range of normative situations. This seems to be the ideal. If they do not meet theoretical rational standards of excellence, then they fall short on objectivity. Valentin Mureşan suggests this claim implicitly when he says "it is necessary for procedures of moral decision making to be removed from their handbook simplicity if we want their social usefulness. And in the context in

²⁶ Greene et al., *ibid.*, p. 2106.

²⁷ The fact that direct contact changes one's moral attitudes may not be arbitrary from an evolutionary standpoint. Evolutionary explanations can be formulated to account for this reaction.

²⁸ Kant says that "if such a way of thinking were to become a universal law of nature, the human race could very well subsist, and no doubt still better than when everyone chatters about compassion and benevolence". (4: 423)

²⁹ Parfit, D., *On What Matters*, Oxford University Press, 2011, p. 322.

which the usefulness of applied ethics is disputed it seems to me that only a *mature proceduralization* can build its credibility”.³⁰ The idea is that in order to determine the “quality” of a method we have to see if certain *mature* conceptual standards are satisfied. Any proposed method ought to be theoretically mature, validated independently of its usefulness for a practice. Kant claims this explicitly. The golden rule cannot ground duties to oneself or duties of beneficence. A normative criterion is needed which can cover all these cases, a robust principle that can deal universally with what we ought to do. The idea behind these conceptions is that a procedure must satisfy a priori theoretical standards, such as universality, in order to be a sound tool for moral assessment. Mature proceduralization and theoretical reflection are needed to analyze difficult cases with major social implications. However, at the micro level of decision making where there are situational constraints, intuitive methods can do a better job.

The language games of intuitive methods

My plea for intuitive methods also originates in Kant’s critique of the golden rule. More exactly, in what Kant omits to say. Surely, universality is one of the most influential standards for moral thinking. However, we need not assume a priori that all moral principles are universal principles because this is an open question to philosophical investigation.³¹ We should not a priori expect to find only universal principles. One may find general principles or not. Or among general principles one may find local ones, which deal only with certain types of actions and situations. Now what is interesting is that in Kant’s critique one does not find the charge that the golden rule cannot track certain moral rules *at all*. Yes, it does not ground duties to oneself or duties of beneficence, but it can ground other moral rules. When somebody asks himself if he wants to happen to him what he would do to others, he realizes that the will of others is just as important as his own. This shows that the moral reasons at work are about negative duties towards others. One should not cause pain to others because he would expect others not to cause him pain. The golden rule tracks at least the negative version of the principle of moral equality. This principle can be said to be local or limited to certain parts of morality in as much as it cannot ground all types of duties. The key question we have to ask is why this is the case. Intuitive methods can track moral standards, maybe not always universally or generally, but why can they do so?

The answer to this question is the key to understanding how intuitive methods work. The natural approach is to see how people use them. Following Wittgenstein’s philosophical method we have to describe the language games of intuitive procedures. Wittgenstein rejects Socrates’ way of doing philosophy. We have to see the problem, not through Socrates’ eyes, but through his companions’ eyes. To the question “what is the moral good?” Socrates wants a unique, general answer, but his fellow companions answer what they have learned to be morally good. In

Wittgenstein’s terms, they give examples of how the word “good” is used. These are language games. The language games of morality are basic activities that form a practice, by which one learns what actions are obligatory or permissible, what attitudes one ought to show in human relationships, that certain feelings ought to be suppressed while others nurtured.³² We learn that an action is right when it springs from the motive of duty, but also when it produces good consequences. There are many language games by which one learns the many facets of morality.

Analyzing the language games of morality helps us to understand the way the golden rule and other intuitive methods work. What is actually asked when one formulates these intuitive methodological questions? When one asks if somebody wishes to have done to him what he would do to others, he does not ask whether this is convenient to him or if his psychological constitution can handle such events. The purpose of the question is whether, by asking it, he sees something wrong from a moral point of view. For example, suppose that Albert insults Martin and afterwards Albert applies the golden rule. The problem is not whether Albert’s subjective profile can handle insults. He might very well not care, whereas Martin might be deeply offended. When one assimilates the golden rule through moral education, he does not ask if a course of action is convenient to him or whether he can handle psychologically some events. He has learned something else. Applying the golden rule Albert tries to see what moral criteria become manifest in order to assess the respective action as being the right one or not. When Albert imagines that Martin insults him, he is constrained to remember the moral criteria he already assimilated, reaching the conclusion that the action of insulting somebody is morally wrong. The moral rule that insulting is morally bad has been learned by a language game of morality. This language game carries with it the structure that insulting is bad even though the person insulted might not be offended. The act of insulting is linked then to the negative assessment of one’s character. This framework of the meaning of rules and how to use them constitutes the moral language game of insulting. This language game represents a part of our shared moral education and practice. Albert can claim consistently at the same time that he does not mind if he is insulted and that the action of insulting is morally wrong. He can claim this consistently exactly because the golden rule is coupled with moral reasons, not with contingent and subjective preferences. By describing such language games, it becomes clear that in the process of learning what is morally right or wrong, intuitive methods are not linked with contingent factors, but with necessary ones. If somebody answers that he is not bothered by insults, he does not *ipso facto* hold that insulting is morally permissible. Through moral education, one has learned that the golden rule is coupled with the idea that reciprocity and equal standing matter.

32 Wittgenstein gives simple examples of language games: “And the processes of naming the stones and of repeating words after someone might also be called language-games. Think of much of the use of words in games like ring-a-ring-a-roses. I shall also call the whole, consisting of language and the actions into which it is woven, the «language-game»”. Wittgenstein, L., *Philosophical Investigations*, Blackwell, 1953, p. 5. Though he does not give examples of normative situations, we should not assume that there are no language games of morality. Since normative language and moral judgement are also learned, there are certainly language games of morality.

30 Mureşan, V., *ibid.*, p. 159.

31 Scanlon, T., “Moral Theory: Understanding and Disagreement”, *Philosophy and Phenomenological Research*, Vol. 55. No. 2, 1995.

The same remarks apply to the methodological question “what do your parents have to say about that?” When one asks this question he is supposed to remember what his parents told him is the right thing to do. One asks what they had taught him is the right thing to do, not what their subjective reactions were or what their mood was. At this point, the main objection against intuitive methods can be dismissed by showing that it rests on a misunderstanding. As Kant objects, one may say that there are families where children learn that theft is permissible and even worthy of pursuing. In these cases, as in the criminal case, the application of intuitive methods will bring about certain outcomes that we consider morally worse. When these children ask themselves what their parents would have to say about a course of action, they will answer that it is permissible, where it is clearly not so. Therefore, one can say, intuitive methods must be rejected. This example does not show that intuitive methods are not reliable. The problem is deeper, and it concerns the criteria of morality, not intuitive methods themselves. The problem is that these children did not learn correctly what they ought to do. They received an inadequate education. Those who learn that theft or violence is morally permissible have not assimilated the language games of morality. They have been taught something else. I’m not speaking about exceptional cases where stealing something for altruistic ends might be the right thing to do. Here, it is about the usual fabric of moral relations. The criminal did not learn correctly how to apply the golden rule given our shared framework of moral education. This is why his argument strikes everybody as false. It is not that the argument follows from the golden rule and that one cannot accept the conclusion; it is that he ties the golden rule to something that one has learned is irrelevant or incorrect. The fact that a judge might have a strong personal desire not to be punished at all by anybody is not relevant with respect to condemning a criminal. When the criminal argues that he should not be punished because the judge does not want to be punished either, he distorts our shared practice of punishment. We punish people not because we simply want to. We punish them because they did something wrong. Being punished is independent of our desires.

Moral education is the process by which an agent learns what a community believes it is the right thing to do. When we say that a child has received a bad education we want to say, on the one hand, that he was not educated at all and, on the other hand, that a wrong belief was passed on. The belief that stealing is morally permissible is false because it runs counter to our commonly shared belief that stealing is morally wrong. The skeptic will say that the two beliefs can be equally true or that we do not know which one is false. This objection is essentially telling us that intuitive methods cannot deal with the problem of relativism. Well, the reply is that this is a problem, not for intuitive methods, but for the criteria of morality itself. It does not matter if we adopt a particularist or generalist conception of morality, intuitive methods are still linked with moral reasons. The debate whether moral reasons are general or not does not touch the fact the intuitive methods in the process of moral education are coupled with necessary moral factors, and not with contingent or subjective ones. It only impacts the nature of moral reasons, not whether they are coupled with intuitive methods of moral decision making.

Suppose that in a community stealing is considered a moral duty.³³ Each member of that community will steal without remorse and feeling good about it. Even if there are communities with opposing moral beliefs, those moral beliefs are not the result of arbitrary factors. If somebody decides not to steal, the community will still consider that decision as being morally wrong. Whatever the reasons for grounding the duty to steal, they cannot be particular and contingent psychological facts such as mood, temporary disposition, intensity of desires and so forth. Even if there is a true moral duty to steal, then what I have shown is that it must be based also on non-contingent features. Irrespective of the question whether moral reasons are general or not, the language games of morality show that intuitive methods are not based on contingent factors, but on something morally necessary. The necessary moral factors might be general or particular. We may reject certain practices as being morally wrong, or we can accept them as being justified. Nevertheless, inside a practice, there are normative criteria that shape people’s behaviour. Moral thinking makes sense in relation with what one has learned to think about such matters. Intuitive methods have been transmitted through moral education in order to track and to make manifest relevant moral aspects. This is what language games show. The golden rule does not cover a variety of cases because in the language games in which it functions, it is tied with moral criteria regarding reciprocity and equal treatment. Other intuitive methods are linked with other moral standards such as beneficence or integrity. The way one uses intuitive methods of decision making, as a result of moral education and practice, shows that they are *essentially* tied to normative criteria, not subjective preferences or contingent emotional reactions. Methodological questions such as “can my decision be publicly endorsed?” or “what if everybody did that?” constrain the agent to take more easily into consideration relevant moral factors.

The usage of intuitive methods makes sense *within* the language games of morality that one has learned. A methodological question, such as the golden rule, functions to make manifest what one already knows is the right thing to do. The criminal, in Kant’s case, ignores how the golden rule works in our shared moral practice. The rule embedded in the language games of morality marks the functional limits within which one can judge and act. The practice of moral education is simple and transparent, and, by describing it, we see with clarity what kind of relation exists between intuitive methods and moral criteria. The importance of describing the language games of morality consists in the advantage that it makes transparent the *internal relation* between intuitive methods and normative reasons.

The result of my analysis has implications for the scientific understanding of intuitive moral thinking. Intuitive thinking is often referred to as a “gut feeling”. The picture is that we “feel” or “sense” that something is right or wrong. There is an influential research paradigm in neuroscience and psychology of moral decision making which advocates for an emotion based model. Both Greene and Haidt claim that most moral judgements are not deliberate reasoning but a matter of emotion and

33 I am not concerned with the problem that such a moral duty is self-defeating. If everybody steals then it is impossible to fulfill this moral duty because there will be nothing else to steal.

affective intuition.³⁴ Reason is a deliberate process, whereas intuition is an affective process. Kahane *et al.* challenge this claim. Their findings suggest that intuitive judgements might not be driven by affective responses.³⁵ Therefore, intuitive moral thinking may not contain affective processes. My result shows that intuitive moral thinking is conceptually linked with the criteria of morality assimilated through moral education. This conceptual relation implies that intuitive moral thinking has to be linked at least with implicit cognitive processes that pick out from the environment which moral reasons are relevant for certain situations. From a learning perspective, it is a process based on prior learning and experience.³⁶ Moreover, neurocognitive results support my conceptual analysis. Thus, Kirsten Volz *et al.* developed a neurocognitive model explaining intuitive judgements in terms of a partially analyzed version of an input that is quickly projected to the rostral medial OFC which is a common neural substrate for coherence.³⁷ The model is basically telling us that intuitive judgements are two-step processes in which relevant parts of information are picked out from the environment and made coherent with prior learning and experience. Even though the model refers to visual and auditory intuitive coherence judgements, it can be extended and tested in normative contexts. It is plausible for the model to hold in normative contexts. Gigerenzer argues that “by explicating the processes underlying “feeling” or “intuition”, the feeling/reason distinction is replaced by one between the conscious versus unconscious reasons that cause moral judgments”.³⁸ Hence, intuition can be cognitively explained by heuristics based on unconscious reasons.

The implication is that not all intuitive thinking is affect and emotion based. If through intuitive moral thinking one effortlessly tracks moral rules that have been previously assimilated, and there is no expression of contingent psychological reactions, then there are at least some cases where emotional affective states do not play a key role in driving one’s moral judgements. We can accept cases where it is clear that moral judgement is emotionally driven. Emotional contagion is a strong

affective process that makes us react automatically to the suffering of others.³⁹ By describing how some intuitive methods of moral decision making work, we can reject the model that intuition is linked to emotions, whereas deliberation is linked to reason.

Conclusion

From the standpoint of traditional philosophy, which is focused on overarching moral principles, intuitive methods of moral decision making may appear subjective and arbitrary. I have shown that the theoretical “chip” did not fall far from the “tree” of common morality. An ethical theory proposes a definition of the moral good and implicitly a test for verifying the application of the respective definition. Ethical theories function similarly to intuitive methods of moral decision making. In both cases it is assumed an internal relation between the procedure and criteria of morality. Both ethical theories and intuitive methods track what is morally relevant.

Once methodological pluralism has made its way into the practice of medical ethics, it is reasonable to claim that intuitive methods of moral decision making are *prima facie* reliable heuristics. In this case, intuitive procedures will prove their usefulness if they can respond to certain needs and if they originate in a practice. With reference to a practice, they might not seem so precarious. It is not surprising that ordinary people react so naturally and familiarly to these kinds of moral tests. They have been raised with them all along in order to see more clearly what the right thing to do is.⁴⁰

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- 36 See Sadler-Smith, E., *Inside intuition*, London Routledge, 2008.
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The Moral Values and Partitive Logic

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About values it has been said that they are "queer things"¹ (J. L. Mackie), and the Romanian philosopher Lucian Blaga called them "amphibious-existences",² emphasizing their subjective but also objective character. At the same time, it is said that values are seen as "units" and for example the value of "good" is not made up of any part,³ that is the values represent entities organically unified.⁴ The fundamental values (or the aim-values) have the role of logical and ontological basis, respectively of "possibility conditions"⁵ for the values of the opposite pole (known as intermediary or mediate-values).

Starting from these assessments, the purpose of our study is to establish what the adequate logic for the analysis of values⁶ is especially that of moral values. It is almost evident that since the values are "wholes", the adequate logic for this subject would be partitive logic. This has found its place in "a map of logic"⁷ in a series of metaphysical applications from philosophical logic. But the partitive logic also has some different variants, as for example the *mereology* initiated by Lesniewski, or the *holology* theorized by Brentano. Some authors consider that these types of partitive logic are instruments that have been perfected enough to explain the logic performance of values. Given our concerns, we advance the hypothesis that for the moral values a variant of partitive logic which we will call *holomery* is more suitable variant and one which we try to build as an alternative to mereology and holology, starting from the suggestions of the Romanian philosopher Constantin Noica.⁸

Before discussing the known variants of partitive logic, we consider that some supplementary explanations in relation to the particulars of the moral values are necessary. The moral values are integrative in a community *par excellence*, since they function as basic values (values-aim). But they also function in their quality of instrumental values (values-means) in the expression "the good deeds", deeds which always have as an ideal "The Good". Then, beyond the level of the "good deeds" we have the level of norms, which permit us to judge if the deeds are "good" or not. So, one should be able to explain logically the process of passage one way or the

- 1 J. L. Mackie, Subiectivitatea valorilor, in Valentin Mureșan (ed.), *Valorile și adevărul moral*, Editura Alternative, București, 1995, p. 155.
- 2 Lucian Blaga, *Opere*, vol. 10, (Trilogia valorilor), Editura Minerva, București, 1987, p. 504.
- 3 G. E. Moore, Obiectul eticii, in Valentin Mureșan (ed.), *Valorile și adevărul moral*, p. 33.
- 4 R. Nozick, Valoare și sens, in Valentin Mureșan (ed.), *Valorile și adevărul moral*, p. 177.
- 5 Nicolai Hartmann, *Ethik*, de Gruyter, Berlin-Leipzig, 1926, p. 338.
- 6 In this study did not consider deontic logic, which is a practical logic of norms. Here we are interested in the philosophical logic of values as wholes.
- 7 Nicholas Rescher, *Topics in Philosophical Logic*, D. Reidel Publishing Company, Dordrecht, 1968.
- 8 Constantin Noica, *Scrisori despre logica lui Hermes*, Editura Cartea Românească, București, 1986.

other from “Good” to “good deeds” and to the “norms of good”, and the reverse is also possible. This passage presupposes the principle of identity. But how will this principle function if one passes from wholes to other wholes?

One has often formulated contradictory opinions about the principle of identity. Some consider that it is a trivial principle, others consider it absurd and without solution (Wittgenstein), but there are also authors who think that identity is not trivial, for Frege two different names may have the same referent, or for Quine the cases in which two names, two signs or two different expressions designate the same object. Quine also talks to us about the indetermination of translation, which means that we can have only relative identities and not absolute ones. In Romanian philosophy, Lucian Blaga offers a nuanced analysis of the principle of identity. He notices that the principle of identity was always used in order to rationalize experience. The use of a “pure identity” is almost impossible, since it may cancel not only existential diversity but also “becoming in time”. One cannot abandon identity. Different variants of it have been stated and Blaga established the following: a) the attenuated identity, which has two species: a₁) partial identity, as works in the relation genus-species; a₂) the elastic identity, that is the identity which allows the acquisition of new notes in the concept content; b) the identity as mathematic equality, an equality of a quantity or structural type; and c) the contradictory identity, specific to dialectical thinking.⁹

For the needs of our study, the most important variant is that of the *attenuated identity*, with its two subspecies. Let us say, for example that at the level of a society we have the value of “good” G₁, at the level of a social group from that society we have G₂, and at the level of a person from the respective group G₃. Thus, a class of {G₁, G₂, G₃} is formed, and if one assumes a temporary partial identity, we would know that any particular form (let us say *x*) of G₁ implies also G₂, and G₃. The mechanism of the partial identity will function then in the following way:

$$(\forall x) (G_1x \rightarrow G_2x) \text{ and} \\ (\forall x) (G_1x \rightarrow G_3x)$$

Identity, of course, is a form of equivalence, and the equivalence relation has the properties of reflexivity, transitivity and symmetry. But such a relation is too strong, permitting substitution operations. But then we would have a total identity, which is not the case here, since in any empirical scientific demarche one cannot speak of a total identity, but only a partial one. If the identity is partial, then the symmetry of equivalence must be avoided. In this way a relation of order is being instituted, the relation of order (in comparison with the equivalence) is born through the replacement of symmetry with anti-symmetry.¹⁰ One reaches anti-symmetry through a form of conversion of symmetry in which only the order of terms is changed, rather than the relation.¹¹ For example, if we take the relation of order \leq ,

⁹ Lucian Blaga, *Opere*, vol. 8, *Trilogia cunoașterii*, Editura Minerva, București, 1983.

¹⁰ Alain Badiou, *Logiques des mondes*, Seuil, 2006, p. 170.

¹¹ See Gheorghe Enescu, *Logica simbolică*, Editura științifică, București, 1971, p. 167.

then the anti-symmetry property can be expressed in the following way:¹²

$$[(x \leq y) \wedge (y \leq x)] \rightarrow (x = y)$$

This emphasizes the fact that between the subordination of the relation of order $x \leq y$ and the conjunctive equation $x \cap y = x$ we have a very tight relation, since the common nucleus from the partial identity can only be *x*. From here the result is that, by replacing *x* in the relation of order, we have $x \cap y \leq y$. So, if we have $x \cap y = x$, then we also have $x \leq y$. This means that between the relation of order and the conjunctive equation we will have an equivalence:¹³

$$(x \leq y) \leftrightarrow (x \cap y = x)$$

In other words, the common nucleus of a partial identity allows us – because of the pointed equivalence – to also accomplish substitutions of elements. But, one can understand through intuition too, that identity in time implies the problem of persistence. In a partial identity persistence is assured at least under the form of a nucleus. But identity can become weak so that at a pinch it can be annulled as it happens when the “good” becomes its opposite “bad”. Even if the passage to the negative of the value is not made, one must take into consideration the relativity of the passages from one level to another. A thing which is “good” for a society may be considered “bad” by a social group, then what is considered “good” for a group may be perceived as “bad” for one or other member of the group. Logically speaking, in such cases the moments do not enter in the same series, that is, the relation between them is not of the type genus-species, but that from a different whole to another different whole. In this situation, the attenuated identity, the weak identity should be able to show us how a continuity between valoric units may be established. In this context, the main operations are not of genus-species subordinate type, but those that *potentialize* the element (part) and the *compenetration* of wholes.

But what form of partitive logic is adequate for these operations? To answer this question we will show briefly what is specific for the mereological perspective and for the holological perspective.

The mereological perspective

A special consideration in the proposition of this logic belongs to Stanislaw Lesniewski.¹⁴ In the spirit of mereology (as an extension of ontology) one can talk about entities, about classes of entities where an entity is considered as a whole. Let us take for example the class of planets (the example used by Mieville, following Grize).

In the sense of classical logic, it expresses the extension of the concept “planet”,

¹² Alain Badiou, *Logiques des mondes*, p. 170.

¹³ Ibid., p. 174.

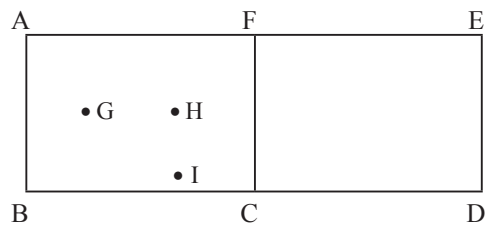
¹⁴ I have treated these aspects at large in the book Ioan Biriș, *Totalitate, sistem, holon*, ediția a doua, Editura Universității de Vest, Timișoara, 2007.

that is:

$p = df \{Mercury, Venus, Earth, Mars, Jupiter, Saturn, Uranus, Neptune, Pluto\}.$

Put otherwise, in its quality as a distributive class, the class of planets contains nine elements and nothing else. The elements which comprise it have the same feature (= that of being planets) and the class is unidimensional. In a collective sense, mereologically, the class of planets will be pluri-dimensional. It contains the nine planets, but also many other things. For example, the distributive class of planets does not include the polar ice from Mars or the red stains from Jupiter or Saturn's rings. The collective class of planets must close this gap.

More significantly, one can consider an example from elementary geometry, following the figure:



In a distributive sense, the distributive class (dCl) which expresses this figure has only three elements. dCl: ABCF, FCDE, ABDE. If we now take the same figure in a collective sense, mereologically, then the mereological class (mCl) will also comprise the three elements, plus an infinity of other elements, as point "I", segment "GH", the line "ABCFE" and so on. Lesniewski thinks that although the mereological class represents a "whole" in the hard sense of the word, the relations part-whole are not that restrictive as in the case of the distributive classes. And they are not that restrictive just because the constructive operations which intervene in mereology introduce a series of "liberties" for "part" or for "whole", while the operation of transitivity does not allow such deviations as "liberties".

After this determination, without wanting to deepen Lesniewski's system, let us remember only the axioms of this system.¹⁵

Axiom 1. If P is part of the object Q, then Q is not part of object P;

Axiom 2. If P is part of object Q, and Q is part of object R, then P is part of object R;

Definition 1. P is an ingredient of object Q if and only if P is an object of the same type as Q or is part of object Q;

¹⁵ Stanislaw Lesniewski, On the Foundations of Mathematics, in *Topoi, An International Review of Philosophy*, D. Reidel Publishing Company, June 1983, p. 25.

Definition 2. P is the class of objects "a" if and only if the following conditions are fulfilled:

- α) P is an object;
- β) any "a" is an ingredient of object P;
- γ) for any Q – if Q is an ingredient of object P, then any ingredient of object Q is an ingredient of any "a";

Axiom 3. If P is the class of objects "a" and Q is the class of objects "a", then P is Q;

Axiom 4. If an object is "a", then the respective object is the class of objects "a".

From the axioms (and also from the explanatory notes which accompany them) it turns out that Lesniewski cared very much for the ontological aspect in the elaboration of mereology, since the classes denote obligatorily real objects. Axiom 1 is the axiom of asymmetry and axiom 2 is that of transitivity. About axioms number 3 and 4 one could say that they belong to equality and to reality respectively.

In Lesniewski's theory the term "part" is a primitive one: Apt B (A is part of B). This term designates an irreflexive, asymmetric and transitive relation. The properties of asymmetry and transitivity result clearly from axioms 1 and 2. On the property of irreflexivity Lesniewski does not insist in a special way, considering that it is sufficiently evident from the meaning of the notion of "part" since intuitively any "part" of something cannot be also its "part" itself.

Then, for Lesniewski's system, the properties of the relation part-whole are:

irreflexivity: $(\forall x) (\forall y) ((Rxy \vee Ryx) \rightarrow \neg Rxx)$;

asymmetry: $(\forall x) (\forall y) (Rxy \rightarrow \neg Ryx)$;

transitivity: $(\forall x) (\forall y) (\forall z) ((Rxy \vee Ryz) \rightarrow Rxz)$;

In this way we are having an ascendant perspective¹⁶ of integrative passages, since any part (which can also be considered whole) integrates successively in the series of the units. As far as Lesniewski's perspective is concerned, it is in an accentuated way functional, of functional mereology, a case in which we attend to an integration from parts to wholes and wholes of wholes like in a relation "from one to more", in a co-univocal relation. Can this type of mereology help us express weak identity in the case of moral values? We think not, since Lesniewski's mereology does not aim at weakening the identity transmitted through transitivity and in any case is not an annulment of it. It is true, that there is the possibility to take into consideration the idea of *mereological supervenience*, an idea in conformity with a certain whole succeeds in persisting through the supervenience of a series of collections of organized parts in a certain way¹⁷ ("principles of diachronic unity state that a persisting whole of

¹⁶ Roberto Poli, *Între speranță și responsabilitate*, Editura Curtea Veche, București, 2009, p. 216.

¹⁷ Dean W. Zimmerman, *Criteria of identity and the 'Identity Mystics'*, in *Erkenntnis*, 48/1998, p. 284.

a certain sort supervenes upon a series of collections of parts arranged in certain ways”). But this cannot constitute a sure guide¹⁸ for the diachronic identity (“[...] mereological supervenience is no sure guide to diachronic identity”).

The perspective of holology

Franz Brentano’s work – *Vom Ursprung sittlicher Erkenntnis* (1889) – has been described as brilliant and it represents an important reference for ethics.¹⁹ His conception of the logic of values was called *holology* in order to emphasize the accent put on the statute of “wholes” in the study of values. Brentano’s ideas have inspired attempts to elaborate a formal axiology.²⁰ He distinguishes between the wholes-sum and the wholes-product (the second being called “organic unities” by Moore). For the wholes-sum the value of the whole is equal to the sum of values of its parts, and for the wholes-product the value of the whole can be different from the sum of values of its component parts. The difference between the two types of wholes is due to the connections which link the parts. For the whole-sum, these connections are not important, but for the whole-product connections are vital, since the value of the whole is given especially by them. Finally, the wholes-sum could be considered “a case limit” of the organic wholes: in this sense, the wholes-sum could be some number of organic wholes, without interactions between parts.²¹

For the wholes-sum the following three axioms are important:

$$1. G > G + B > B$$

(in words: a whole of “good” is preferable to a sum of “good” and “bad”, sum which at its turn, is preferable to a whole of “bad”; G is the symbol for “good”, B is the symbol for “bad”, “>” expresses the preference, and “+” expresses the sum). With the determination that the axiom is valid if all G are interpreted as positive values and all B as negative values.

$$2. G_1 + G_2 > G_1 \text{ (or } G_2)$$

(That is, a unit of good – as sum of G_1 and G_2 – is better than its parts taken separately).

$$3. G_1 > G_2 \wedge \neg \text{for } (G_2, G_1) \rightarrow \exists G_3 (G_3 \equiv G_2 \wedge \text{pt } (G_3, G_1))$$

(A unit of value G_1 is preferable to another unit of value G_2 , G_2 not being part of G_1 ,

¹⁸ Nikolaus Wandering, *Masses of stuff and Identity*, in *Erkenntnis*, 48/1998, p. 306.

¹⁹ In this work – notes Andrea Göb – the basic ideas of its ethics are formulated, which have a big influence in contemporary moral philosophy (*In dieser Schrift sind die Kerngedanken seiner Ethik, die großen Einfluss auf die zeitgenössische Moralphilosophie hatten*): Andrea Göb, Einleitung, in Franz Brentano, *Schriften zur Ethik und Ästhetik*, Ontos Verlag, 2010. www.ontosverlag.com

²⁰ We continue here Roberto Poli’s formalization, *Între speranță și responsabilitate*.

²¹ Ibid., p. 208.

which implies the fact that there exists a third unit of value G_3 equivalent to G_2 , and that G_3 is part of G_1). This thesis is very strong, points out Roberto Poli, since it tells us that “two units of value are comparable in what the quantity of value is concerned *only if* these units are made of values *of the same type*”.²² This means we have to understand, in the simplest situation, that G_2 and G_3 are cases of the same species of value.

Let us see the main thesis related to the organic units. As we have already emphasized, in their cases the relation between units and parts is changed as their connection is essential. In addition, one passes to a frame with three categories: good (G), bad (B) and indifferent (I). From the more important axioms one can retain:

- (1) $G_1 \cdot G_2 > G_1 + G_2$ (G_1 composed with G_2 is worth more than their sum)
- (2) $G_1 \cdot I > G_1 + I$ (G_1 composed with I is worth more than their sum)
- (3) $B_1 + B_2 > B_1 \cdot B_2$ (the sum of two bad things is preferable to their composition)
- (4) $B + I > B \cdot I$ (the sum of a bad thing with an indifferent one is preferable to their composition).

It is difficult to say if these axioms are sufficient. Important is the fact that the value of these organic wholes is not diminished in the value of their parts.²³ Can this holological perspective help us in understanding the weak identity further? At first glance it may seem so, since, at least for the organic units, we witness a series of nuances. Respectively, the composition of some units of values can intensify the valorization, it may even annul it or permit the passing to other units. The wholes-sum do not help us since the third axiom demands that we have values of the same type that is, there is no more space for contrary values. We do not advance greatly with the organic wholes, since we cannot notice clearly the mechanism of identity in the passages which occur there. The great difference in comparison with Lesniewski’s mereology consists in the *descendant* perspective of the demarche, from the more comprehensive units to the subordinate units.

The symbolical identity and holomery

Why can’t we stay with the two forms of partitive logic? Lesniewski’s logic, in an ascendant and inductive perspective can lead to contradictions such as the paradox of the fission. This type of paradox threatens any transitivity such as “one – several” in a temporal register, as happens in the famous example with Theseus’ ship: a ship (*a*) is repaired during her voyage, by replacing each board, so that in fact we have a new ship (*b*), which, though it has new boards is the equivalent of the first ship ($a = b$); if someone builds from the old boards another ship (*c*) identical to the first one, we will have ($a = c$); but ($b \neq c$), which leads us to the following paradox:

²² Ibid., p. 217.

²³ Ibid., p. 230.

- 1) $b = a$
- 2) $c = a$
- 3) $b \neq c$

Do such situations happen only in the case of artefacts or in the world of values as well? We consider that paradoxical situations appear in social life too, including in the sphere of morality. Here “the perverse effects” emphasized by the sociologist Raymond Boudon, when an individual agent or Other acts reasonably with the aim of making “good” but in the integrated assembly of actions it is noticed that the deed is “bad”, the transitivity of “good” may be annulled. Logically speaking, here we have a basic limit to any ascendant-inductive demarche: the loss of the initial unit through the subordinations and successive integrations which take place.

We can find a similar situation also on the inverted road of Brentano’s hology. Through the successive, descendant, passage from a more general whole to individual wholes, the individual is subordinated like a statistic – Noica tells us – and in the end is abolished. Then, the classic deduction does not account for the process through which the passage of the exterior means of general to the interior means of the individual takes place.²⁴ As we have pointed out, it is true, that Brentano’s hology is more nuanced, allowing an analysis with three values: good, bad and indifferent. One tells us that a whole of “Good” can be bigger or smaller, the same happens with the “Bad”, but one does not have the logical mechanism through which the “Good” can become “Bad”, can become “Indifferent” or backward. How can we explain logically the fact that a whole of more general “Good” can become a whole of “Good” that is smaller, less appreciated by a social group that is limited or by a person? Or that the same whole of “Good” can become a whole “Indifferent” for another social group/ for another person? Or that the respective whole of “Good” appears as a whole of “Bad” for another social group/person or for the same social group/person in another temporal moment?

As Nicolai Hartmann points out²⁵ one must take into account the fact that in the sphere of morality the following types of relativities function; 1) the ethical values are relative for “free” persons in their quality as carriers of value; 2) the values are relative to “being valuable for someone”. So values such as loyalty, friendship, love, security and so on count only for the one who cherishes them; 3) the values are relative to context, human behaviours are considered valuable in a different way from one situation to another, for example in situations of danger courage is valued, in emotional situations composure is valued, in contests fairplay and so on. Here the diversity of good is indurated.

If one takes into consideration these relativities, then one must concentrate on the performance of identity in the passages from a whole of value to another status. If the quality of transitivity resists, it is necessary to establish logically what happens to identity when the wholes can compenetrates and succeed in intensifying themselves. Finally, a thing which displeases us in mereology and hology is

the fact that we do not know exactly how the principle of identity functions. In order to clarify this problem, the Romanian philosopher Constantin Noica, whose suggestions we are using in what follows here, points out that we need a hermeneutical logic, a logic in which the *potentialize* operations of elements, of parts and of *compenetration* of elements and of wholes are important. The entity which can express the means in which the individual can be potentialized at the level of the whole (being part of the power of the whole) and succeeds, at the same time, by compenetration, in itself transmitted as a whole, is the *holomer* (whole and part at once).

At the end of his book *Modelul cultural european* (European Cultural Model), Constantin Noica offers us as a model for a holomer the mathematical “point”. Let us take for example, says Noica, “a tridimensional cube”. If you flatten it, it becomes a square, which is a cube still, but bidimensional. If one flattens the square, it becomes a segment of straight line, which is a unidimensional cube. And if you flatten from the extremities the line too, making of it a point, one could say (and not only say) that the point is a zero-dimensional cube. Society’s problem is: what kind of point is added?²⁶ Besides the metaphysical model of Leibniz’s monad and the approaches which can be made with caution to the model of biological evolution, the mathematical model offers, may be openings even more nuanced for the holomeric individuals as Noica envisions.

In Noica’s opinion,²⁷ Aristotle’s logic, and the concepts obtained here suffer on the methodological side from two major deficiencies: the concepts are still, they lack movement and fluidity; one or other of the terms (the general, particular or individual) is hidden or even eliminated in all forms of logic used by the old or new logic. So, Hermes’s new logic must outgrow these deficiencies, and in order to be developed it needs other models different from those already tried, respectively by the biological world of genres and species for Aristotle’s conception or by the theory of ensembles for modern symbolical logic.

The first deficiency pointed out, that of the conceptual static of Aristotle’s logic, can be eliminated if one conceives all the logic situations (repetitions, symmetries, proportionalities, coordinations or contradictions) from the perspective of the logical field, a field in which the constituents are found in perpetual movement, in transformation, operating one against the others. In a logical field not only is the part found in the unit, as presented by Aristotle’s logic the symbolical logic so far, but also the whole is in the part, the part wearing in it all the load of the whole. This situation appears clearly in the world of man, in the world of human values.

The second deficiency, that of the elimination or dissolution of a term from the logic triangle (general, particular, individual) can also be eliminated in Hermes’s logic by abandoning the classic logic operations and establishing other operations proper to the situations of the logical field. The operations of inclusion (of species in

26 Constantin Noica, *Modelul cultural european*, Editura Humanitas, București, 1993, pp. 155-156.

27 I treated these concepts in Ioan Biriș, *Conceptele hermeneutice și logica lui Hermes*, în Alexandru Surdu, Viorel Cernica, Titus Lateș (coord.) *Studii de istorie a filosofiei românești*, vol. V, Editura Academiei Române, București, 2009.

24 Constantin Noica, *Scrisori despre logica lui Hermes*, p. 108.

25 Nicolai Hartmann, *Vechea și noua ontologie și alte scrieri filosofice*, Editura Paideia, București, 1997, pp. 104-105.

genus, or the inclusion of classes) the membership, the implications, the conjunction, the disjunction, the reunion and intersection of ensembles and so on are not apt to express a whole which is made, is constituted and accounts for the processing of the passage of the whole in the part. But the logic until now treated the ensembles as collections of elements, in the perspective of Hermes's logic the second ensemble (as Noica calls it) does not represent a collection of elements any longer, but the distribution of a whole of elements. Inside each ensemble other operations are then valid, those of potentializing of the element and of compenetrations, as we have already mentioned here.

The elements are composed through compenetrations and not through conjunctions, disjunctions or implications, which makes them equivalent as bearers of the same whole, but not necessarily equipotent, since only some elements can rise (symbolically) to the power of the whole. The relation part-whole can only be circular, the whole being that which permits the existence of parts, since it is a cause and law for them, and they define the unit, make it possible because the unit is made, it is not a "given". This means of composition of the element-holomer, will thus abolish the known law of the inverted relation content-sphere of traditional logic, because, through the operation of compenetrations, the more comprehensive it gets, that is if it increases its sphere, the better will be the determination, which means that the content will also grow. There are, of course different types of compenetrations such as the physical ones (the physical field), the biological (the biological characters) or the different historical and spiritual expressions. In all cases variations of the sphere and content of the concepts takes place, because they become dynamic through compenetrations, in a vertical movement. But – Noica wonders – what flowing calculus can render this creation of the concept in successive steps? None of them, maybe the platonic type approximation of the Idea or a calculus of conceptual probabilities.²⁸

If the entirety of mathematics can be built starting from the relation of membership (since inclusion is a double membership, the equality is a double inclusion, and from here one can pass to correspondence, through which one reaches the number, number which is constituted as the basis of the entire mathematical edifice), meditates Noica, then all that is non-mathematical, could be built starting with unilateral identity.²⁹ The holomers – as true elements of reality and of thought, of the world of values – are ensembles with a single element, and the unilateral identity admits compenetrations. Following this process of compenetrations (possible only under the condition of the unilateral identity) the multitude is converted gradually through vertical steps, in new units, and thus it reaches the concept of the law and the meaning. The second ensembles, as hermeneutical ensembles have a special feature, their elements are more than simple elements, they are ensembles in themselves. So "the second ensemble is the ensemble of ensembles with a sole element, of a domain of reality and thought".³⁰ This counts as the nature of the element, because this nature is the bearer of a unit, which can be expressed

symbolically in the following way:

$$M = \{ \{a\}, \{b\}, \dots, \{n\} \}$$

Here we cannot say that an element belongs to the ensemble, but instead that the element is "an image" of the ensemble, as with Leibniz's monada, there is an intimate (due to compenetrations) element-ensemble which can be approximated through an equality, or, says Noica, through a unilateral identity. This intimacy can be imagined as a complete self-sufficiency of the element, until it is totally closed, like Leibniz's monada. Due to the degrees of intimacy implied here, the results is that the elements-holomers may be equivalent, as already mentioned, but not necessarily equipotent, the diversification of the element through compenetrations could have a potential of its own, different from the others. The second ensemble is the ensemble of ensembles with a sole element because the compenetrations operation cannot be made except under the same unit, which means that the elements have an affinity between them, that is, the element $\{a\}$ is in fact aM , and element $\{b\}$ is bM and so on by virtue of the same parameter of the ensemble. The operations inside the second ensemble, as already shown are two: the potentialization of the element (= its elevation at the power of the unit) or the de-potentialization of the ensemble in its indivision distribution, that is, in the symbolical transcription aA (ensemble A has de-potentialized in element a); the compenetrations operation, respectively in symbolical form aM (element a in compenetrations with ensemble M), bM et cetera.

But what is *the unilateral identity* in an application? Is it the same thing as the weak identity about which we have spoken at the beginning of the study? Yes and no, it is an identity weakened in comparison with the hard sense of identity but, at the same time, it cannot be reduced to a weak identity, because, under a symbolical aspect, it is maintained, though the power of the whole. In the relation whole \rightarrow part identity functions absolutely, thus having the properties of reflexivity, symmetry (the symmetry of the unit which is "an exterior means" in a first phase with the same unit, which passing in part, has become "an interior means", that is symmetry exterior means-interior means) and transitivity. For example, if a political party proposes an economic solution is appreciated as "good" for the country the valorization of "good" can pass in whole to the level of the branches of the party, then to the level of the members of the respective party. That is, the whole of the valorization "good" passes integrally to the subordinate "parts", the identity having a strong but unilateral sense from whole to parts, which we can express with the help of the logic of relations:

$$\begin{aligned} \text{reflexivity: } & (\forall x) (\forall y) ((Rxy \vee Ryx) \rightarrow Rxx); \\ \text{symmetry: } & (\forall x) (\forall y) (Rxy \rightarrow Ryx); \\ \text{transitivity: } & (\forall x) (\forall y) (\forall z) ((Rxy \wedge Ryx) \rightarrow Rxz). \end{aligned}$$

But let us admit that this is just an ideal case in the world of values, when identity can function entirely by passing from whole to part. If we take into

28 Constantin Noica, *Scrisori despre logica lui Hermes*, p. 158.

29 Ibid., p. 161.

30 Ibid., p. 159.

consideration the three types of relativities of the ethical values established by Hartmann, then we will have to confess, that sometimes, for different reasons (different interests, different valorizations, different situations), what is considered “good” by a party at the country level, in order to use the same example, can be considered “bad” from the part of a branch of the party or by the part of some members, or it may be considered “indifferent”. What happens in such cases? Here a unilateral identity does not function anymore, but a *unilateral contradiction* does suggests Noica, since in the relation part \rightarrow whole, the part contradicts the whole (the “bad” valorization from the subordinate part contradicts the “good” valorization from the whole level), a thing which can be expressed – also with the help of the logic of relations – as follows:

irreflexivity: $(\forall x) (\forall y) ((Rxy \vee Ryx) \rightarrow \neg Rxx)$;
 asymmetry: $(\forall x) (\forall y) (Rxy \rightarrow \neg Ryx)$;
 intransitivity: $(\forall x) (\forall y) (\forall z) ((Rxy \wedge Ryz) \rightarrow \neg Rxz)$.

But this is also a sublimation at the other extreme. Noica points out that in the world of values we have the relations of potentialization and compenetrations, so we are interested by the situations in the continuum between these extremes, that is between the extremes of the unilateral identity and the unilateral contradiction. One must notice that everything we know from classical logic or from modern logic concerning the maintenance of the principle of identity and of bivalence does not help us at all. In our opinion, known logic cannot help us since they were created in order to express possible situations of univocity and not equivocality. As Noica tell us, these logics did not take into account the operations of compenetrations and potentialize of elements. As some other authors have noticed, we have two types of paradigms and two types of codes attached to them in the approach to existence: the digital paradigm and the analogical paradigm. The digital paradigm operated with clearly separated units, while the analogic one presupposes a continuing scale. But existence and nature in general is “composed of analogic elements”³¹ that is why one can say that the analogical language is primordial. In the digital language the binary opposed categories dominate: A or B, C or D etcetera. The biblical genesis, for example, can be “read” in a digital code, too when we say that darkness was separated by light, the earth by water and so on. But when we are talking about the existence and knowledge of God, about the divine “Good” and about the divine creation through which God reveals Himself, digital language no longer helps us, and we must appeal to the analogical language. Analogy is necessary because “nature itself is rather a series of analogic continuums than a series of decided categories”.³²

If nature itself can be considered an analogical continuum, then the world of values is also a “continuum”, that is why the application of a “digital” type logic to this reality can only lead to confusion. Analogy implies ambivalence, even prevarication since it passes over each binary category and it takes features from each of them, as it happens in the compenetrations process proposed by Noica.

31 John Fiske, *Introducere în științele comunicării*, Editura Polirom, Iași, 2003, p. 91.

32 *Ibid.*, p. 152.

This is the reason why the analogical concepts (equivocal) can be too strong, by having an “excess of significance”. Do the equivocal variants enter by all means in contradiction? Such a question confuses not only traditional logic but also the actual philosophy of science. For example, the concept of “mass” in Newton’s physics (of the formula $F = m \cdot a$) and the concept of “mass” in Einstein’s physics (of the formula $E = m \cdot c^2$) are often seen as plainly contradictory, resulting in the idea of the incommensurability of paradigms, as suggested by Thomas Kuhn. Are they really contradictory? We consider that no, since they are only equivocal, that is they offer us two different meanings which we call “physical mass”. The contradiction between these two utterances presupposes that we talk in the same way about the referent but one utterance must agree in this sense and the other must disagree, and be excluded, which is not the case with equivocality.

We find ourselves in the same situation with moral values when they compenetrates. The more general “Good” of the previous example can pass also as “good” at the subordinated level of branches or members of a party, but it can be revalued and considered, in a equivocal way as a “bad” or something “indifferent”. Because of the special situation of analogy, as a primordial language, we can state that, in accordance with Emerich Coreth, that the analogical terms represent the condition of possibility for conceptual thought as such.³³ Without this last, comprehensive unity (all-encompassing), only a conceptual chaos would exist. Following Coreth’s suggestion, from the analogical concepts can be derived, on the one hand the univocal concepts (which apply to their objects in the same sense) and on the other hand, the equivocal concepts (which apply to their objects in different senses). This means that the analogical terms apply to their objects partially in the same sense and partially in different senses. In their quality of ultimate condition of possibility for the conceptual thinking as such, the analogical terms present two traits: a) they cannot receive supplementary determinations from outside, but only from themselves, that is they determine themselves; and b) these terms are not conditioned (where a feature is caused by the first one). Such characteristics remind us of the status of forms in Plato’s theory. When a feature is valid not only in relation to an entity but also in relation to its contrary, when a form can “communicate” with other forms, including the contrary ones, it means that the internal structure of the forms can only be analogic.

In this situation, one must ask which is the nature of the unilateral identity from the valuable compenetrations? In traditional and modern logic one has distinguished between two meanings of identity: the material identity “ \equiv ” which expresses an extensional equivalence, in conformity with the theory of the truth established by Tarski; its formal identity “ $\langle = \rangle$ ” is an intensional identity. Generally speaking, social reality presupposes an intensional logic, a logic of the senses, because in the social world the referents have a high degree of opacity (in Quine’s sense). We consider that the unilateral identity in our theory is a species of formal identity, a species which we call *symbolical identity*, because the holomer (as part of the power of the whole) is intensional and symbolically the bearer of the whole, is not necessarily a material one. As a formula we will write “ $\langle = \rangle$ sym”, that is, in a holomer the whole

33 Emerich Coreth, *Metaphysics*, Herder and Herder, New York, 1968, p. 114.

of value $\Leftrightarrow sym$ the part of value (the whole of value is identical symbolically with the part of value).

The nature of the symbolic carries something religious in its origin³⁴ that impulse of lifting the soul to the superhuman³⁵ and in the world of moral values we find this nature in the flush of lifting the valued element to the level of the whole. In the holomer, the compenetrations of the whole with the element implies, on the one hand, a situation of homogeneity, and on the other hand a heterogeneous situation. Logically, the symbolical identity of the holomer is found in the direction of movement whole \rightarrow part, highlighting the situation of homogeneity. In the opposite direction, part \rightarrow whole, we will have the unilateral contradiction which reflects the heterogeneity. That is why, in a holomer the process of compenetration must combine, logically, the reflexivity of the whole of value with the irreflexivity of the part of value, the symmetry from the old unit with the asymmetry of the part becoming a holomer, but also the transitivity of the old unit with the intransitivity of the new part. The logical properties of the holomer, expressed also through the logic of relations, seem then to be the following:

non-reflexivity: $(\forall x) (\exists y) ((Rxy \vee Ryx) \wedge \neg Rxx)$;

non-symmetry: $(\forall x) (\exists y) (Rxy \wedge \neg Ryx)$;

non-transitivity: $(\exists x) (\exists y) (\exists z) ((Rxy \wedge Ryz) \wedge \neg Rxz)$.

These properties of the holomeric relation, we think, express in a more adequate way the analogical structure of the holomer, a structure where the identity of the old whole is found symbolically in the new part, but there can be parts where it cannot be found (the “good” considered by a social group can be found in the same quality as a subgroup, but there can be other subgroups where the same “good” is considered as “bad”); identity of the old whole is symmetrical to a certain point in the new holomer, but it becomes asymmetrical from the moment when the ex-part is opposed to the old whole; the uniformity from the symbolical identity allows the transitivity from whole to part, but the unevenness of the new part which is reinforced at the power of a new whole cancels transitivity, per assembly having non transitivity.

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³⁴ See also Ioan Biriş, “Religious Violence and the Logic of Weak Thinking: between R. Girard and G. Vattimo”, in *Journal for the Study of Religions and Ideologies*, vol. 11, No. 32, 2012.

³⁵ See René Alleau, *De la nature des symboles*, Payot, Paris, 2006, p. 24.

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What is Wrong with ‘Being Authentic’?

Cristian IFTODE

The modern culture of authenticity and the inconsistency of the common notion of “authentic self”

According to Taylor’s definition, the culture of authenticity designates the new “understanding of life which emerges with the Romantic expressivism of the late eighteenth century, that each one of us has his/her own way of realizing our humanity, and that it is important to find and live out one’s own, as against surrendering to conformity with a model imposed on us from outside, by society, or the previous generation, or religious or political authority”.¹ The modern ideal of authenticity would have been made possible by an “expressivist turn” having in Rousseau’s writings “its point of departure”, and in the work of Herder, “its first important articulation”.² But why would it be relevant in the context of today, for our own present or “particular moment”, as Foucault might have put it,³ to undergo an analysis of such expressivism, beside the historical interest? It is a fact that this ideal of authenticity was initially appealing only to intellectual and artistic élites; but it can be argued, as Taylor does in his book *A Secular Age*, that in Western contemporary societies, “this kind of self-orientation seems to have become a mass-phenomenon”.⁴ Taylor’s thesis is that a “simplified expressivism” has permeated Western society since the Second World War: “Expressions like ‘do your own thing’ become current; a beer commercial of the early 70s enjoined us to ‘be yourselves in the world of today’ [...]. Therapies multiply which promise to help you find yourself, realize yourself, release your true self, and so on”.⁵

The extraordinary impact that the self-help industry and the self-improvement movements have had on Western society over the last decades is symptomatic for this popular culture of authenticity, as Guignon argues in his illuminating text *On being authentic*.⁶ It is clear that behind all these exhortations and recipes on how to find yourself and improve your life (the “me, me, me” culture, as Tom Wolfe sarcastically labeled it) lies a specific conception of the self, a specific relationship to the self. This particular view is reflected, for instance, in the following words of Phillip McGraw or ‘Dr. Phil’ (one of the gurus of the self-help programs, along with the famous Oprah Winfrey), extracted from his huge bestseller *Self Matters: Creating your Life from the Inside Out* (2001):

1 Ch. Taylor, *A Secular Age*, Cambridge, MA: The Belknap Press of Harvard University Press, 2007, p. 473.

2 Idem, *The Sources of the Self. The Making of the Modern Identity*, Cambridge, MA: Harvard University Press, 1989, p. 368.

3 See M. Foucault, “What is Enlightenment?”, in *The Foucault Reader*, edited by Paul Rabinow, New York: Pantheon Books, 1984, p. 38.

4 Ch. Taylor, *A Secular Age*, p. 474.

5 Ibid., p. 475.

6 Ch. Guignon, *On Being Authentic*, London: Routledge, Taylor & Francis e-Library, 2005.

“The authentic self is the you that can be found at your absolute core. It is the part of you that is not defined by your job, or your function, or your role. It is the composite of all your unique gifts, skills, abilities, interests, talents, insights, and wisdom. It is all your strengths and values that are uniquely yours and need expression, versus what you have been programmed to believe that you are ‘supposed to be and do’. It is the you that flourished, unself-consciously, in those times in your life when you felt happiest and most fulfilled”.⁷

However appealing this vision of the “Real Me” or “authentic self” lying at the core of every human being may be – and even salutary, in the present context of globalization and consumerism – it runs the risk of being profoundly inconsistent and extremely vulnerable to different kinds of objections. I suggest we combine these possible criticisms in a sequence somehow similar to the famous three-stage argumentation On the Non-existent belonging to Gorgias (Nothing exists; even if something exists, it cannot be known; even if it could be known, it cannot be communicated).

(1) There is no “Real Me”, no “authentic self”. This thesis can be endorsed in more than one way.

(a) It can be argued that this whole idea of the self conceived as a “unique constellation of inner traits”⁸ – qualities that define you once and for all, but need expression in the external world – is really a historical and cultural product rather than some natural condition or innate idea of every self-reflective human being. The Romantic expressivism is itself a consequence of the birth of modern individualism: a vision of us as self-contained, self-encapsulated subjects, as monads. We are ‘social atoms’ with rights and duties who perform various roles on the social stage; the “Real Me” can then be found only in our inner depth: a field protected from social boundaries (our very own “secret garden”), in short, a “nuclear self” (Guignon). But “what if it turns out that the conception of inwardness presupposed by the authenticity culture, far from being some elemental feature of the human condition, is in fact a product of social and historical conditions that need to be called into question?”⁹ What if not only some of our most intimate and personal aspirations, thoughts and desires are in fact socially induced (maybe nothing more than effects of successful advertising), but the distinction itself between (real) person and (social) role is a cultural product, as suggested by Goffman?¹⁰ Maybe “the self is nothing else than the historical correlation” of a specific “technology”¹¹, maybe the relationship to the self is always the result of an ethical (or, in modern times, rather biopolitical) process of subjectivation, as Foucault repeatedly pointed out in his final

7 Ph. McGraw, quoted by Ch. Guignon, *op. cit.*, pp. 1-2.

8 Ch. Guignon, *op. cit.*, p. 4.

9 Ibid. p. 5.

10 See for instance E. Goffman, *Frame Analysis. An Essay on the Organization of Experience*, Boston: Northeastern University Press, 1986, pp. 293-300.

11 M. Foucault, “About the Beginnings of the Hermeneutics of the Self: Two Lectures at Dartmouth”, *Political Theory*, Vol. 21, No. 2 (May, 1993), p. 222.

texts, interviews and lectures.

(b) Another way of attacking this allegedly “authentic self” of modern times is by emphasizing the theological “aura” of the “jargon of authenticity” (Adorno). There is no doubt that the vocabulary and the thinking reflexes of key figures such as Oprah or Dr. Phil hold deep connections with the Christian tradition, in particular with the exhortations made by modern Protestant reformers to search for your inner truth in order to find spiritual guidance for your life (“the Kingdom of God is in you”), to detect and exercise your particular gifts, your precise calling, in order to lead a good life. The question is whether this way of thinking can still make sense when taken out of its religious frame and planted in a “secularized soil”. “For when my guide is understood as nothing other than me, it is hard to see what authority this guidance could or should have”.¹²

(c) There is also the possibility of contrasting the pop culture of authenticity with all the contemporary philosophical approaches – and also those from the social sciences – who are engaging in a ‘postmodern’ deconstruction of the subject (understood as an absolute centre of knowledge and action) and are embracing a sort of ‘neobuddhist’, reductionist view of personal identity, sometimes inviting us to a proliferation of roles and characters in our lives (as, for instance, in the Deleuze-Guattari project of a “schizoanalysis”).¹³

(2) Even if an “authentic self” really does exist, it could not be known. Let us suppose that this “authentic self” conceived as the core of every human being, a singular mixture of abilities, interests and other inner traits really does exist. How am I to know it, how am I to get in touch with this “Real Me”? What I experience as a subject of self-reflection, from a psychological point of view, is a continuous stream of impulses, urges, feelings, thoughts and needs. But am I to rely only on the intensity of what I feel, trust or seem to need in this present moment? Apparently, “this self-knowledge has nothing to go on besides what is lit up in the flickering light of self-reflection”, “no markers to indicate whether what shows up is important or peripheral”.¹⁴ As to the various “recovery” or “self-improvement” programs that flourish in the Western societies nowadays (particularly in the States), Guignon points out that, instead of helping people “get in touch with their true selves”, they “often have the effect of pressuring people into thinking in ways that confirm the ideology of the founders of the program”.¹⁵

¹² Ch. Guignon, *op. cit.*, p. V.

¹³ “It is certain that neither men nor women are clearly defined personalities, but rather vibrations, flows, schizzes, and “knots” [...] The task of schizoanalysis is that of tirelessly taking apart egos and their presuppositions; liberating the prepersonal singularities they enclose and repress; mobilizing the flows they would be capable of transmitting, receiving, or intercepting... For everyone is a little group (*un groupuscule*) and must live as such – or rather, like the Zen tea box broken in a hundred places [...]” (G. Deleuze and F. Guattari, *Anti-Oedipus. Capitalism and Schizophrenia*, translated by R. Hurley, M. Seem, H.R. Lane, Minneapolis: University of Minnesota Press, 1983, p. 362).

¹⁴ Ch. Guignon, *op. cit.*, p. 5.

¹⁵ Ibid.

(3) Even if the “authentic self” could be known by means of introspection, it cannot be expressed, that is, communicated to others in a way that preserves its singularity and its richness. Now let us suppose that I can get in touch with this “true self” of mine conceived as the core and the mark of my singularity, of my uniqueness as a human being. How will I be able to share this singular truth about myself with other human beings? This argument may be inspired by Nietzsche’s claim that language and conscience are secondary facts of our nature, appearing only under the pressure of a “need to communicate”; in fact, language as such would suppose an inescapable falsification, leveling or “equalization” of singular experiences, just as in the field of consciousness there would be no room except for “what is common”, what can be made public, what belongs to everyone and no one in particular.¹⁶ Or we might content ourselves to repeat Adorno’s statement from *The Jargon of Authenticity*, that “language itself – through its generality and objectivity – already negates the whole man, the particular speaking individual subject: the first price exacted by language is the essence of the individual”.¹⁷

Beside these powerful criticisms aimed to prove the inconsistency of the notion of “authentic self” used within the context of self-improvement projects and self-help programs, there is also an objection of the pragmatic kind that can be brought against this idea. Supposing we have a “true self” that can be known and expressed in the external world, how can we be so sure that this will really improve our daily existence or help us lead a more fulfilling life? Maybe there is something ‘dark’ there, which is better to remain hidden – let us say our most aggressive, cruelest drives that, freely expressed, will only “aggravate the difficulties of living we face in the modern world rather than alleviating or curing them”¹⁸; maybe the “authentic self” is nothing more than that “vast reservoir of energy pushing us to satisfy basic needs and drives”¹⁹ that Freud called the id; maybe there is nothing so special about our deepest feelings and thoughts, nothing so interesting or original: “deep down below all our secrets are the same”, repeats in almost every interview the famous novelist Amos Oz.²⁰

The Romantic expressivism as a major source of the modern understanding of the self: Christian relational personalism vs. modern monadological individualism

I mentioned at the beginning of this text that the work of Rousseau is generally seen

¹⁶ See for instance G. Bondor, *Dansul măștilor. Nietzsche și filosofia interpretării (The Dance of the Masks. Nietzsche and the Philosophy of Interpretation)*, București: Ed. Humanitas, 2008, pp. 300-301.

¹⁷ Th. Adorno, *The Jargon of Authenticity*, translated by K. Tarnowsky and Fr. Will, London: Routledge, 2003, p. 10.

¹⁸ Ch. Guignon, *op. cit.*, p. 5.

¹⁹ Ibid., p. 51.

²⁰ See for instance Amos Oz, the interview with Elizabeth Farnsworth, “Coping with Conflict”, from Jan. 23, 2002, available at: http://www.pbs.org/newshour/bb/middle_east/jan-june02/oz_1-23.html.

as the starting point of the Romantic expressivism or “culture of authenticity”. We could add that Romanticism is usually considered as an “undercurrent of reaction against Enlightenment rationality and mechanization”, an “attempt to recover a sense of oneness and wholeness that appears to have been lost with the rise of modernity”.²¹ The emphasis that Rousseau placed on “the voice of nature” would be of major significance for the Romantic quest for the inner self seen as the ultimate reality and truth of the human being. “Let us lay it down as an inconvertible rule that the first impulses of nature are always right; there is no original sin in the human heart”, it is said in the famous novel *Emile*.²² The “voice of nature” is regarded as an opposite of the public world and of all the social pressures that pervert our primary, childish being. “The original impulse of nature is right, but the effect of a depraved culture is that we lose contact with it. We suffer this loss because we no longer depend on ourselves and this inner impulse, but rather on others and on what they think of us, admire or despise in us, reward or punish in us. We are separated from nature by the dense web of opinion which is woven between us in society and can no longer recover contact with it”.²³

The only way of hearing the “voice of nature” and getting in touch with our ‘true’ self would be by disconnecting from social reality and its constraints, “by turning inward and accessing our most spontaneous and basic feelings”.²⁴ In order to do that, Rousseau will produce a large number of autobiographical writings, starting with his famous and influential *Confessions*. Their role is not to impose a somehow artificial unity onto a life story, nor to present sheer facts exactly as they happened, but rather to record “feelings one now has about the past”: “the primary truth becomes subjective; it is the truth of my subjectivity, the truth as ‘authenticity’”.

But the genre of confessions is clearly not a Romantic invention. Foucault pointed out with extreme clarity that the birth of confession should be traced back to the first Christian monastic practices, in the transition of Christian spiritual practices from exomologesis to exagoreusis²⁶, and that “confession” should be regarded as

emblematic for the historical appearance of a new kind of relationship to the self: the hermeneutics of the self, seen as “the meticulous, analytical interpretation (déchiffrement) of one’s states of consciousness, the reading (lecture) of the traces of desire in one’s own thoughts, etc”.²⁷ Foucault is interested in contrasting this Christian “hermeneutical” self with the “gnomic” self of the Greek and Roman philosophers,²⁸ holding that “ancient spiritual exercises suppose absolutely no introspection”. Taking the well-known example of the examination of conscience, Foucault will show that “for Seneca it is not a matter of deciphering or detecting, through this regular examination, something within oneself, such as a secret identity or hidden nature, but of assuring the regulation of the principles of actions that it gives to itself and that it effectively accomplishes”.²⁹ So we could state that the ancient self is not a secret or a hidden nature, but rather “a work to accomplish: the work of life (oeuvre de vie)”.³⁰

We could say that the Romantic self is in some important ways descending from the Christian hermeneutical relationship to the self. There exists, however, an essential difference that has to be acknowledged.

The key Christian figure in stressing the experience of inwardness as the right way of relating to ourselves is surely Augustine, author of *Confessions* and an important source of inspiration for Rousseau’s autobiography. One of Augustine’s famous lines is the following: “Do not go outward; return within yourself. In the inward man (in interior homine) dwells truth”.³¹ But Augustine’s experience of inwardness is only “a step towards God”. “By going inward, I am drawn upward” or, “as Gilson put it, Augustine’s path is one ‘leading from the exterior to the interior and from the interior to superior’, God ‘being closer to me than I am myself, while being infinitely above me’”.³² In contrast to this belief, we find in Rousseau’s *Emile* a very different declaration of faith: “I long for the time when, freed from the fetters of the body, I shall be myself, at one with myself, no longer torn in two, when I myself shall suffice for my own happiness”.³³ So “the source of unity and wholeness which Augustine found only in God is now to be discovered within the self”.³⁴

In the same line of thought, according to Foucault, the Christian confession to an Other (your spiritual father), the continuous verbalization of the movements

21 Ch. Guignon, *op. cit.*, p. 27; see also Ch. Taylor, *Sources of the Self*, pp. 413-414.

22 “In the orthodox theory, the source of the higher love is grace; it is the God of Abraham, Isaac, and Jacob. For Rousseau, (without entirely ceasing to be God, at least of the philosophers), it has become the voice of nature. The doctrine of the original sin, in its orthodox understanding, has been abandoned. Nature is fundamentally good, and the estrangement which depraves us is one which separates us from it” (Ch. Taylor, *Sources of the Self*, p. 357).

23 Ibid.

24 Ch. Guignon, *op. cit.*, p. 30. It could be argued that, while attempting to recover a sense of wholeness and communion with nature, the Romantic fleeing from the public world does nothing but reinforce the modern individualism with its sense of an essential solitude of men, derived from an image of “my true being” as a private, self-encapsulated, monadological self: “the self is not just the center of the universe. It is the universe” (*Ibid.*, p. 34).

25 Ibid., p. 36.

26 See on this topic the excellent study of Fr. Gros, “Le souci de soi chez Michel Foucault. A review of *The Hermeneutics of the Self: Lectures at the Collège de France, 1981-1982*”, published in *Philosophy and Social Criticism*, vol. 31, no. 5-6, 2005, pp. 697-708, as well as M. Foucault’s lectures “About the Beginnings of the Hermeneutics of the Self: Two

Lectures at Dartmouth”, published in *Political Theory*, vol. 21, no. 2, 1993, pp. 198-227.

27 Fr. Gros, *op. cit.*, p. 697.

28 “The term *gnomé* designates the unity of will and knowledge; it designates also a brief piece of discourse through which truth appeared with all its force and encrusts itself in the soul of people. Then, we could say that even as late as the first century A.D., the type of subject which is proposed as a model and as a target in the Greek, or in the Hellenistic or Roman, philosophy, is a gnomic self, where force of the truth is one with the form of the will” (M. Foucault, “About the Beginnings of the Hermeneutics of the Self”, pp. 209-210).

29 Fr. Gros, *op. cit.*, p. 703.

30 Ibid., p. 705.

31 Augustine, *De vera Religione*, XXXIX, 72, quoted by Ch. Taylor, *Sources of the Self*, p. 129.

32 Ch. Taylor, *Sources of the Self*, p. 134; p. 136.

33 J.-J. Rousseau, *Emile, or Education*, translated by B. Foxley, London: Dent, 1911, p. 257.

34 Ch. Taylor, *op. cit.*, 362.

of thinking, is not an end in itself, but rather a means, a necessary moment on the way to renunciation of the self: “the revelation of the truth about oneself cannot be dissociated from the obligation to renounce oneself”, states Foucault.³⁵ The final aim of a Christian spiritual and ascetic life is not subjectivation by way of discovering and expressing the hidden nature of an individual, but rather trans-subjectivation through personal communion with God. So it could be argued that Romanticism reinstalls not the Christian hermeneutical self, but a modern, secularized version of it: no longer able to seize the perspective of a personal communion with God, the modern man is forced to remain on the level of his individuality, to hold on to his most intimate feelings, drives and dreams, that he will judge as expressions of the final truth about himself.

I think that Foucault’s judgement about the final aim of Christian spiritual practice can be approved from a theological point of view, but only if we add to it a crucial assumption: the “self” that the Christian believer must abandon or sacrifice on his way to God is his egoistic and passionate individuality, but not his spiritual being, his person or hypostasis: “the root principle of asceticism; a free renunciation of one’s free will, of the mere simulacrum of individual liberty, in order to recover the true liberty, that of the person which is the image of God in each one”.³⁶ The fact that, to the best of my knowledge, Foucault’s texts on Christian spirituality lack such a crucial distinction is not all that surprising, if we take into account the cultural context of his own work. In order to make ourselves clear on this essential topic, let us take into consideration another way of seeing the Romantic expressivism as having its roots in the Christian personalist tradition.

I mentioned earlier that, according to Taylor’s interpretation, we should see the work of Herder as the “first important articulation” of the modern ideal of authenticity.

“Herder put forward the idea that each of us has an original way of being human. Each person has his or her own ‘measure’ [...]. There is a certain way of being human that is my way. I am called upon to live my life in this way, and not in imitation of anyone else’s [...]. Being true to myself means being true to my own originality, and that is something only I can articulate and discover. In articulating it, I am also defining myself, I am realizing a potentiality that is properly my own. This is the background understanding to the modern ideal of authenticity”.³⁷

An essential feature of Taylor’s definition of “expressivism” is the idea that the only way of getting in touch with this inner voice or impulse, which is the call of my ‘true’ nature, is through “articulating what we find within us”: so it is “not only a

making manifest but also a making, a bringing of something to be”.³⁸ In other words, it is equally about discovering the self and creating the self in the process. One other thing has to be added: expressivism is not meant to be a mere description of our way of existing as unique and original individuals; it is a doctrine stressing a moral obligation. We have “to live up to our originality”.³⁹

Taylor regards this notion of authenticity as being prepared by some older Christian ideas, as the notion of “a variety of gifts which is correlative to the variety of vocations, which we see expressed in St. Paul, and then taken up” and emphasized by the Puritans.⁴⁰ Nevertheless, he believes that the late eighteenth century adds to this older view something new and unprecedented, which is “the notion of originality. It goes beyond a fixed set of callings to the notion that each human being has some original and unrepeatable ‘measure’”.⁴¹ Taking into account the traditional Orthodox theology, I tend to disagree with Taylor on this particular point.

I think the important question we have to ask regarding this issue is whether this expressed belief in each person’s “originality”, which has shaped our very own ideal of authenticity, is entirely the product of modern times, or rather a significant (individualistic) inflection of an older view about the nature of human beings and their fundamental ends. The Christian theology has always insisted on the fact that the human being is made in the image and likeness of God, as Scripture affirms (Gen. 1: 26-7), the mystery of personhood being that each and every one of us is a singular “icon” of God, a singular “measure” (as Herder will put it) of this divine likeness, and also an unique perspective over the world and its Creator.⁴² We can argue that none of the religions or philosophies previous to the Christian era has ever placed such a huge importance on a single human life, a single spiritual calling or personal relationship of every human being to the loving God, as Christianity did.⁴³

38 Idem, *The Sources of the Self*, p. 374.

39 “Each one of us has an original path which we ought to tread” (*Ibid.*, p. 375).

40 Ibid. On this matter, see the classical analysis of M. Weber, *The Protestant Ethic and the Spirit of Capitalism*, translated by T. Parsons, New York: Scribner, 1958.

41 Ch. Taylor, *The Sources of the Self*, p. 376.

42 See, for instance, Pseudo-Dionysius the Areopagite’s use of the term “analogy”, a term with double meaning, as Vl. Lossky explains, signifying “à la fois le rapport des créatures à Dieu (amour et désir de déification) et le rapport de Dieu aux êtres créés (idées divines et théophanies)” (Vl. Lossky, “La notion des «analogies» chez Denys le Pseudo-Aréopagite”, in *Archives d’histoire doctrinale et littéraire du Moyen Age*, 5/1930, p. 309). Lossky insists on the fact that, according to Pseudo-Dionysius, one of the most influential Christian writers of the old times, there is a “measure of participation” to the divine virtues that is specific to every single creature and defines its rank in the Universe: “la mesure de participation des êtres aux vertues”; “modes de participation prescrits à chaque créature” (p. 300); “Dieu, Cause de tout être, se manifeste à chaque créature et se fait aimer par elle à travers l’idée qui lui est appropriée” (p. 302); “l’assimilation aux vertues divines, selon le mode préétabli pour chacun” (p. 305).

43 J. Zizioulas, one of the most important Orthodox theologians of our times, sees “the identification of the «hypostasis» with the «person»” as the great “revolution” accomplished in the Greek thought of the first Christian centuries: “The term ‘hypostasis’ never had any connection with the term ‘person’ in Greek philosophy... ‘person’ would have been

35 M. Foucault, “About the Beginnings of the Hermeneutics of the Self”, p. 221.

36 Vl. Lossky, *The Mystical Theology of the Eastern Church*, trans. Fellowship of St. Alban and St. Sergius, New York: St. Vladimir’s Seminary Press, 1976, p. 122.

37 Ch. Taylor, *The Ethics of Authenticity*, Cambridge, MA: Harvard University Press, 1992, pp. 28-29.

There is “a Christian consciousness of the unique character and great eternal worth of every human being”, states Archimandrite Sophrony in his influential book on St. Silouan the Athonite.⁴⁴ And even if it is true that Christian spiritual life demands a “renunciation of the self”, a specific self-loss, self-emptying or kenôsis, the ideal communion with God or theôsis is not meant to abolish the personal being or human hypostasis.

But the modern Christian writers feel also the need to insist on the opposition between the prevalent notion of individual and the Christian concept of personhood or human hypostasis, and hence between what I would call a monadological individualism in contrast to a relational personalism.

“When we speak of the individual (in Greek, atomon), we speak of the human being in isolation, in separateness, of the human being as competitor. When we speak of the person (in Greek, prosopon), we speak of the human being in relationship, in communion, of the human being as co-worker. Shut off from others, self-centered, unrelated, each is an individual – a unit recorded in a census – but not an authentic person. It is our relationships that make us persons [...]. Personalism stands in this way at the opposite extreme from individualism”.⁴⁵

J. D. Zizioulas has argued that Christian theology has inspired, in fact, not one, but two different anthropologies, one of them focusing on the introspective movement, while the other has tried to emphasize the mystery of the human person in the light of man’s capacity to relate to God and the other human beings. The concept of man that has prevailed in Western philosophy and culture would actually be “a cross-fertilization” between Boethius’ definition of the person as “an individual substance of a rational nature” (*naturae rationabilis individua substantia*) and Augustine’s subject of introspection; in other words, “a combination of two basic components: rational individuality on the one hand and psychological experience and consciousness on the other”. This would have set the ground for individualism and the conception of the human being as “a unit endowed with intellectual,

regarded by the Greeks as expressive of anything but the essence of man, whereas the term ‘hypostasis’ was already closely linked with the term ‘substance’ and finally was identified fully with it... from an adjunct to a being (a kind of mask) the person becomes the being itself and is simultaneously – a most significant point – *the constitutive element* (the ‘principle’ or ‘cause’) of beings” (J. Zizioulas, *Being as Communion. Studies in Personhood and the Church*, New York: St. Vladimir’s Seminary Press, 1997, pp. 36-39).

44 Sophrony, Archimandrite, *Saint Silouan the Athonite*, translated by R. Edmonds, Waldon: Stavropegic Monastery of St. John the Baptist, 1991, p. 227.

45 K. Ware, “The Human Person as an Icon of the Trinity”, in *Sobornost*, 8, 2 (1986), p. 17. See also N. Berdyaev, *The Beginning and the End*, translated by R. M. French, London: Geoffrey Bles, 1952, pp. 135-136: “the individual is a naturalistic and sociological category. The individual is born within the generic process and belongs to the natural world. Personality, on the other hand, is a spiritual and ethical category. It is not born of a father and mother, it is created spiritually and gives actual effect to the divine idea of man. Personality is not nature, it is freedom, and it is spirit”.

psychological and moral qualities centered on the axis of consciousness”.⁴⁶

But the theology of the Eastern Church would have inspired an extremely different approach, rejecting the understanding of the human personhood as “a complex of natural, psychological or moral qualities which are in some sense ‘possessed’ by or ‘contained’ in the human individuum”, while arguing that the person cannot be conceived “as a static entity, but only as it relates to”. According to this view, personhood should be conceived as prior to conscious reflection, rational decision or productivity, revealing itself only through the acts of freedom, creativity and love. The “two basic aspects of personhood” would be ekstasis and hypostasis: on the one hand, the “openness of being”, “the ek-stasis of being, that is, a movement towards communion which leads to transcendence of the boundaries of the ‘self’ and thus to freedom”; on the other hand, “a catholic, that is, integral and undivided” mode of existence, a hypostasis “absolutely unique and unrepeatable” that should not be seen as an atom or a “part” of humanity, but as a singular measure of “the totality of human nature”.⁴⁷

It follows that from the point of view of a Christian Orthodox anthropology, the person and the individual should be conceived as the two opposite poles of the human reality (as Archimandrite Sophrony and others have argued): the state of the individual (atomon) is a state of separation and estrangement reflecting the Fall of Man, while the person (prosopon, persona) refers to the everlasting image of God and should be understood merely as a potentiality that may or may not be actualized in our earthly existence (the same was the case with Herder’s notion of “originality”).

In addition to this, it is important to realize, at the level of self-expression, that any attempt to capture the mystery or the ‘alterity’ of a singular person in a discourse will unavoidably sum up a mixture of so-called ‘individual’ characteristics, ‘traits of character’ that really belong to no one in particular, that are generic, impersonal features of the common nature of man.⁴⁸ And I think that following a completely different path, M. Foucault has reached a similar conclusion when he denounces the perverse, insidious alliance between the effect of totalization and the effect of individualization characterizing the modern biopolitical paradigm. In Foucault’s view, “bio-power” is not about repressing individuals, denying them the means of self-expression, but rather it is about producing individuals and identities by way of combining the disciplines of the body with the regulations of the population.⁴⁹

To conclude this section, I would hold that modern individualism may actually

46 J. Zizioulas, “Human Capacity and Human Incapacity: A Theological Exploration of Personhood”, reprinted in *Communion and Otherness: Further Studies in Personhood and the Church*, edited by Paul McPartlan, London: T&T Clark, 2006, pp. 210-211.

47 Ibid., pp. 212-213.

48 “Finally, we admit that what is most dear to us in someone, what makes him himself, remains indefinable, for there is nothing in nature which properly pertains to the person, which is always unique and incomparable” (Vl. Lossky, *The Mystical Theology of the Eastern Church*, p. 121).

49 See M. Foucault, “The Subject and Power”, in *Michel Foucault: Beyond Structuralism and Hermeneutics*, edited by Hubert L. Dreyfus and Paul Rabinow, Chicago: Chicago University Press, 1983, p. 213.

have its roots in the Christian tradition (as in the case of Leibniz,⁵⁰ his perspectivism being crucial for what A. Renaut and others have called “the Age of the Individual”), but it comes to be seen, at least in the Orthodox tradition, as the adversary of relational personalism. And that is because, unlike monads with “no windows” (Leibniz, *Monadology*, §7), human persons find their reality and their ‘being’, according to this Christian perspective, only in relation to God and to one another – and above all, in that paradigmatic relationship called love: that self-transcendent love supposed to transfer the being of the person who loves into the person that is loved, following the divine, perichoretic model of the Holy Trinity.

The ‘final’ Foucault about philosophy as care of the self and politics of ourselves: Towards an understanding of authenticity as a social virtue

Let us return now to the possibilities that Western contemporary societies seem to offer in terms of choosing a particular way of life and self-fashioning. It would appear that we face an unfortunate dilemma: either we hold on to the ideal of authenticity conceived as the free expression of our individuality, no matter how inconsistent this understanding of the self turns out to be, or we surrender to “the phoniness of game-playing” (Fritz Perls) that seems to characterize our day-to-day social interactions.⁵¹

In his 1982 lectures at the Collège de France, Foucault makes at some point this capital statement:

“When one sees the meaning, or rather the near-total absence of meaning, given to all the familiar expressions, such as: come back to yourself, free yourself, be yourself, be authentic, etc. [...] one might begin to suspect the impossibility of constituting today an ethic of the self. However, it is perhaps an urgent, fundamental, and politically indispensable task that of constituting an ethic of the self, if it is true that after all there is no other point [...] of resistance to political power than in the relation of the self to itself”.⁵²

Foucault was well aware of the ‘strategic’ use that the rhetoric of authenticity and self-determination may have in the context of a biopolitical process of subjectivation,

50 See on this matter Leibniz, *Système nouveau de la nature et de la communication des substances* (1695), §16, where he deems his philosophical individualism to be a way of reinforcing faith in God, eternity of the soul and free will.

51 In this second case, we might still proclaim, as Guignon points out, “a sort of postmodern version of authenticity”: “embracing the fact that there is no ‘true self’ to be”, “the postmodern ideal, then, is to *be* that lack of self with playfulness and ironic amusement” (Ch. Guignon, *op. cit.*, p. 61).

52 The passage is quoted after E. McGushin, *Foucault’s Askêsis: An Introduction to the Philosophical Life*, Evanston, IL: Northwestern University Press, 2007, p. XV; the full passage, in a slightly different translation, is to be found in M. Foucault, *The Hermeneutics of the Subject. Lectures at the Collège de France 1981-1982*, translated by G. Burchell, New York: Palgrave MacMillan, 2005, pp. 251-252.

freeing us from the ‘burden’ of fundamental ethical and political obligations. The seeming paradox is that by encouraging us to “be ourselves” without any spiritual ‘training’ whatsoever, the pop culture of authenticity actually makes us extremely vulnerable to all the ‘recipes’ for happiness and self-accomplishment delivered in the public space, while making us indifferent to the mechanisms and the procedures of political decision. Thus, the demand for authenticity loses any actual meaning and, worse than that, it becomes itself a disciplinary technique, an instrument used in ascribing to individuals ‘normal’, standard identities, reassuring them that this is what they ‘really’ want or what they ‘really’ are.⁵³ But knowing all this, Foucault still proclaims that to articulate “an ethic of the self” is the only possible “resistance” to disciplinary power.

What I wish to suggest in this final section is that, contrary to the general views expressed in the 80s and the 90s accusing the ‘last’ Foucault of a narcissistic, “anti-humanist individualism” (as A. Renaut and many others have argued), his final ethical project may actually help us with some vital clues about how to elaborate a notion of authenticity that avoids if not all, at least many of the pitfalls of the modern culture of authenticity that I mentioned in the beginning of my paper.

It could be argued that the very mentioning of Foucault as an ‘individualist’ is unsuitable,⁵⁴ taking into account that the French thinker judged the definition of “the self as something wholly contained within an individual monad” as actually being “the effect of techniques of separation, isolation, individuation, and differentiation” that shape the modern world.⁵⁵ Following McGushin’s remarks, we could state that a monadological individualism is nothing but “a disciplinary effect” of the modern biopolitical paradigm and that “for Foucault, the self is not contained within itself but is always outside of itself — inhabiting its relationships, grasping itself through social and historical practices, knowing itself in terms of discourses produced around and through it”.⁵⁶ And this is what I think explains his final return to the ancient understanding of philosophy as “ascetics” and “care of the self”.

As Fr. Gros explains it, “what interests Foucault in the care of the self, is the manner by which it is integrated in the social fabric and constitutes a motor

53 “Of course the independence can become a very shallow affair, in which masses of people each try to express their individuality in stereotyped fashion. It is a critique that has often been made of modern consumer society that it tends to breed a herd of conformist individuals” (Ch. Taylor, *Sources of the Self*, p. 40).

54 I developed this argument, in similar terms, in my article “Foucault’s Idea of Philosophy as ‘Care of the Self’: Critical Assessment and Conflicting Metaphilosophical Views”, in *Elsevier Procedia – Social and Behavioral Sciences*, 71 (2013), pp. 76-85.

55 E. McGushin, *Foucault’s Askêsis*, p. 301. In his illuminating study “The Subject and Power”, Foucault states that the struggle for a modern subjectivity involves two levels of resistance: on the one hand, there is the resistance to *normalization* by asserting “the right to be different”; on the other hand, we may speak of a resistance to solitude or *estrangement*, to “everything which separates the individual, breaks his links with others, splits up community life, forces the individual back on himself and ties him to his own identity in a constraining way” (pp. 211-212).

56 E. McGushin, *Foucault’s Askêsis*, p. 301.

for political action”.⁵⁷ It is of vital importance to remember that in its Socratic or Stoic context, the care of the self didn’t imply “a solitary activity”, but that it “was exercised in a largely communal and institutional framework”, constituting “an intensified mode of social relation” and having a goal that was both ethical and political. We should not also neglect the essential role of a partner in the activities of taking care of oneself, “the figure of the master of existence”, the one helping me to learn how to ‘care’. It is equally true that for a Greek or a Roman philosopher, the care of the self could not be separated from the care for others. In fact, most of the spiritual exercises or “techniques of the self” (understood as concrete practices of ethical subjectivation) took “the form of eminently social activities: conversations, correspondences, teaching and apprenticeship in the schools, individual formation, et cetera”.⁵⁸ In addition, if we accept Hadot’s reading of the spiritual exercises,⁵⁹ all of them supposed a dialogical structure, implicit if not explicit: they involved enhancing attention and a permanent dialogue with oneself as well as others, assuming the ‘self’ as a work to accomplish and thus a particular distance between myself as I am at the present moment and the one I could become, a relationship to my own self as another (than the person I am now).

But how could all these reflections about the ancient philosophical practice seen as a “way of life”, if not as the “true life” (alêthês bios), help us with our modern notion of authenticity? Following up to a certain point Guignon’s remarks from the last chapter of his book *On being Authentic*, I would say that the big problem comes from the fact that we are accustomed to think of the ideal of authenticity in terms of a self-regarding, individualistic virtue, when it should be considered (at the same time) a social virtue.

In an insightful chapter of his book *Truth and Truthfulness*⁶⁰, B. Williams argues that the very meaning of notions such as “attitude” or “belief” implies an idea of steadiness: “our declarations do need to be patterned in some ways rather than others if they are to count as declarations of any sort of belief or opinion”.⁶¹ But this steadiness is not something we naturally possess or that could be easily obtained through introspection, in a Rousseauist self-transparency; the interactions with others within the social context are the thing that is forcing us into “steadying” our minds. “The basic mechanism depends on the fact that there are others who need to rely on our dispositions, and we want them to be able to rely on our dispositions because we, up to a point, want to rely on theirs”.⁶² The lesson that Williams draws from confronting two key figures of Enlightenment, Rousseau and Diderot, is that “we need each other in order to be anybody”.⁶³ “Drawn to [...] make my

own beliefs and feelings steadier (to make them, at the limit, for the first time into beliefs), I become what with increasing steadiness I can sincerely profess”, states Williams.⁶⁴ But isn’t this an accurate description of the “gnomic” self of the Ancients in Foucault’s reading, the very idea of an “etho-poetic” effort, the real sense of the “aesthetics of existence” – not “a dandyism of the 20th century” (as Hadot thinks), but “a harmony between logoi and erga” (Gros)?

The key question we have to ask at this final point is the following: who are the others that help me stabilize my beliefs and finally shape my personal identity? And does this inescapable relationship to others automatically mean surrendering to “the dictatorship of the Anyone” (Heidegger’s *das Man*) or to “the latest fads and fancies purveyed by the media”?⁶⁵ The others are holding the scales for weighing the ‘quantities’ of self-discovery and self-invention involved in my very own search for authenticity. But these others aren’t just anyone; they are “the significant others”⁶⁶, “the critical friends”⁶⁷, or maybe those who, like myself, have undergone a philosophical training that provided them with the conceptual tools necessary in order to analyze and criticize my attitudes, beliefs and general views. Or – even more restrictively – those who have proved that they know how ‘to take care of themselves’. In short, those with whom I sense myself closer to that ideal state that Jaspers called “authentic communication”,⁶⁸ and K.-O. Apel, “argumentative community”.⁶⁹

I think that Foucault’s return, in his final years, to a philosophy seen as a spiritual practice and an effort of self-transformation may help us in making more sense of our modern notion of authenticity. This conversion implies two dimensions inextricably tied together. On the one hand, at a personal or rather interpersonal

64 Ibid. p. 204.

65 Ch. Guignon, *op. cit.*, p. 5.

66 See G. H. Mead, *Mind, Self, and Society*, edited by Ch. Morris, Chicago and London: The University of Chicago Press, 1962, in particular pp. 140-141; p. 195; pp. 368-373. See also H. S. Sullivan, *The Interpersonal Theory of Psychiatry*, London: Routledge, 2001.

67 See for instance the interview “The Illusion of Self-Sufficiency”, given by Al. MacIntyre to A. Voorhoeve, in *Conversations on Ethics*, New York: Oxford University Press, 2009, p. 120: “What is the consequence of not having critical friends? It is that one becomes the victim of one’s hopes and fears, of wishful thinking and fantasy”.

68 “The certainty of authentic being resides only in unreserved communication between men who live together and vie with one another in a free community, who regard their association with one another as but a preliminary stage, who take nothing for granted and question everything” (K. Jaspers, *Way to Wisdom: An Introduction to Philosophy*, translated by R. Manheim, New Haven and London: Yale University Press, 1954, p. 26).

69 See K.-O. Apel, “The *A Priori* of the Communication Community and the Foundation of Ethics: The Problem of a Rational Foundation of Ethics in the Scientific Age”, in *Selected Essays. Volume Two: Ethics and the Theory of Rationality*, edited by E. Mendiera, New Jersey: Humanities Press, 1996. See also Ch. Taylor, *Sources of the Self*, p. 37: “They are still in a web, but the one they define themselves by is no longer the given historical community. It is the saving remnant, or the community of the like-minded souls, or the company of philosophers, or the small group of wise men in the mass of fools, as the Stoics saw it, or the close circle of friends that played such a role in Epicurian thought”.

57 Fr. Gros, “Le souci de soi chez Michel Foucault”, p. 701.

58 Ibid., p. 702.

59 See P. Hadot, *Philosophy as a Way of Life: Spiritual Exercises from Socrates to Foucault*, translated by M. Chase, Oxford UK and Cambridge USA: Blackwell, 1995.

60 See B. Williams, “From Sincerity to Authenticity”, in *Truth and Truthfulness: An Essay in Genealogy*, Princeton and Oxford: Princeton University Press, 2002.

61 Ibid. p. 192.

62 Ibid.

63 Ibid., p. 200.

level, there is the care of the self: the struggle to live in perfect harmony to a chosen philosophy, to completely absorb it into one's life and actions, to make it true by your own example. On the other hand, at a public level, there is the politics of ourselves. This means being able to address a vital question: "in what is given to us as universal, necessary, obligatory, what place is occupied by whatever is singular, contingent, and the product of arbitrary constraints?"⁷⁰ At this stage, we can truly grasp the importance of authenticity conceived as a social virtue; it involves the sincerity and the courage of those people that Foucault named "parrhēsiasts": people that don't hesitate to express "the unpopular views", this being a crucial condition for the proper functioning of a democratic regime.⁷¹

Instead of abandoning the culture of authenticity together with the ethic of the self, maybe it is time to shape an idea of authenticity that will not be the expression of monadological individualism, but that will hold a significant communitarian dimension. At this point, if we manage to distance ourselves from a strictly Nietzschean reading of Foucault's philosophy (whether it is a favorable one, as in the case of Deleuze's monography⁷², a less favorable one, as in the case of Rorty⁷³, or an extremely critical one, as in the case of Ferry, Renaut⁷⁴, Habermas⁷⁵, or even Taylor⁷⁶), we might reconsider his final reflections about the "care of the self" as articulating a way to reject an ideal of authenticity rooted in Nietzsche's dream of a "great man".⁷⁷

70 M. Foucault, "What is Enlightenment?", p. 42.

71 "The expression of unpopular views is especially important for a democratic society, because it is a presupposition of a free society that it is only by playing off a diverse range of views in the ongoing conversation of the community that the best possible answers can be reached" (Guignon, *op. cit.*, p. 82).

72 See G. Deleuze, *Foucault*, translated by S. Hand, Minneapolis: University of Minnesota Press, 1988.

73 See R. Rorty, "Moral Identity and Private Autonomy: The Case of Foucault", in *Essays on Heidegger and Others*, New York: Cambridge University Press, 1991.

74 See L. Ferry and A. Renaut, *French Philosophy of the Sixties: An Essay on Antihumanism*, translated by M. Cattani, Amherst: The University of Massachusetts Press, 1990.

75 See J. Habermas, *The Philosophical Discourse of Modernity: Twelve Lectures*, translated by Fr. Lawrence, Cambridge, MA: The MIT Press, 1987.

76 See Ch. Taylor, "Foucault on Freedom and Truth", in *Political Theory*, Vol. 12, No. 2, 1984, pp. 152-183.

77 "A great man – a man whom nature has constructed and invented in the grand style – what is he? [...] If he cannot lead, he goes alone; then it can happen that he may snarl at some things he meets on his way [...] he wants no 'sympathetic' heart, but servants, tools; in his intercourse with men he is always intent on making something out of them. He knows he is incommunicable: he finds it tasteless to be familiar; and when one thinks he is, he usually is not. When not speaking to himself, he wears a mask. He rather lies than tells the truth: it requires more spirit and *will*. There is a solitude within him that is inaccessible to praise or blame, his own justice that is beyond appeal" (Fr. Nietzsche, *The Will to Power*, translated by W. Kaufmann and R. J. Hollingdale, New York: Vintage Books, 1968, § 962, p. 505). This passage is also quoted by Al. MacIntyre in the final chapter of his already classical book *After Virtue: A Study in Moral Theory*, third edition, Notre Dame: University of Notre Dame Press, 2007.

First of all, we would have to recognize that there isn't such a thing as choosing oneself 'from scratch', since I am always already installed in a community, (de)formed by a particular education and constituted by some internalized social demands.⁷⁸ This means that the act of choosing oneself is realized only in the complex game of assuming/distancing from the standards and values of my community and my time.⁷⁹ This also means that the new 'values' or 'goods' that a 'great man' would propose are not values as such, but only candidates for this title, waiting and hoping for their validation in the context of social interactions.⁸⁰ It follows that a consistent idea of authenticity should not imply the radical solitude of Nietzsche's 'great man' – "a pseudo-concept", "individualism's final attempt to escape from its own consequences", according to MacIntyre⁸¹ – but the intensification of social relationships, in agreement with the original meaning of *epimeleia heautou* ("care of the self").

To conclude, I am not trying to suggest that Foucault's philosophy does not suppose an undeniable Nietzschean source. But this could be explained in terms of Foucault's acknowledgement of a vital need, in any community, not only for 'good' Cynics (as MacIntyre, Taylor and other critics of modernity), but also for 'bad' Cynics: ⁸² the ones forcing upon us a radical critique of our institutions, practices and "games of truth", deconstructing the "jargon of authenticity" in the name of a more genuine search for authenticity, well aware of the fact that any focus of resistance to disciplinary power will soon become a structure of power in itself, if not consistently

78 "Things take on importance against a background of intelligibility. Let us call this a horizon. It follows that one of the things we can't do, if we are to define ourselves significantly, is suppress or deny the horizons against which things take on significance for us [...] Self-choice as an ideal makes sense only because some issues are more significant than others... Which issues are significant, I do not determine. If I did, no issue would be significant. But then the very ideal of self-choosing as a moral ideal would be impossible [...] Otherwise put, I can define my identity only against the background of things that matter. But to bracket out history, nature, society, the demands of solidarity, everything but what I find in myself, would be to eliminate all candidates for what matters [...] Authenticity is not the enemy of demands that emanate from beyond the self; it supposes such demands" (Ch. Taylor, *The Ethics of Authenticity*, pp. 37-41).

79 "[...] the definition of our identity. We define this always in dialogue with, sometimes in struggle against, the identities our significant others want to recognize in us. And even when we outgrow some of the latter – our parents, for instance – and they disappear from our lives, the conversation with them continues within us as long as we live" (Ibid., p. 33).

80 "Goods, and with them the only grounds for the authority of laws and virtues, can only be discovered by entering into those relationships which constitutes communities whose central bound is a shared vision of and understanding of goods" (Al. MacIntyre, *After Virtue*, p. 258).

81 Ibid., p. 259.

82 "In this West, which has invented many different truths and fashioned so many arts of existence, Cynicism constantly reminds us that very little truth is indispensable for whoever wishes to live truly and that very little life is needed when one truly holds to the truth" (M. Foucault, *The Courage of the Truth (The Government of Self and Others II): Lectures at the Collège de France 1983-1984*, translated by G. Burchell, New York: Palgrave Macmillan, 2011, p. 190).

critically approached in its turn. I think it is quite possible that this kind of ‘bad’ Cynicism was, in Foucault’s view, the right “politics of ourselves”. I also think that it is from this point of view that we should understand Foucault’s invitation to cultivate in our lives what Nietzsche once called “brief habits”, his insistence upon the fact that “taking distance on oneself” or “thinking otherwise than before” (se dépendre de soi-même) should be considered “the ethic of an intellectual in our day”.⁸³

“My point is not that everything is bad, but that everything is dangerous, which is not exactly the same as bad. If everything is dangerous, then we always have something to do. So my position leads not to apathy but to a hyper- and pessimistic activism”.⁸⁴

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83 M. Foucault, “Le Souci de la vérité”, interview with François Ewald, *Magazine littéraire* 207, 1984, p. 22. Foucault’s statement is quoted by Th. Flynn, “Philosophy as a way of life. Foucault and Hadot”, in *Philosophy and Social Criticism* 31 (5-6)/2005, p. 617.

84 M. Foucault, “On the Genealogy of Ethics”, in *The Foucault Reader*, edited by P. Rabinow, p. 343.

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2. Applied Ethics



Environmental Risk and Moral Obligations: Reflections on an East European Experience

Adrian-Paul ILIESCU

This paper aims to contribute to an assessment of the proportion in which Romanian authorities fulfill their moral duty to protect the population from environmental risk created by the existence of nuclear facilities in a country which is also exposed to seismic hazard. Such an assessment, in a complete and elaborated form, would imply a lot of work which cannot be done here. But it is important that, at least, some analyses be done and some (worrying) things be said, even before a full-fledged evaluation of the situation is provided.

Facts and threats

Although Romania ranked 82nd (WRI 6.78%) in the United Nations' *World Risk Index*, which implies that *generally speaking* it is not a high risk country as compared, for instance, with the Philippines (place 3, WRI 27.98%) or even with Japan (place 16, WRI 13.53%),¹ yet it is still *a high seismic hazard* country.² Even more alarmingly, in a certain sense "on a European scale, Romania and Moldavia come off worst", due to their high susceptibility, i.e. "likelihood of harm, loss and disruption in an extreme event triggered by a natural hazard".³ In particular, Bucharest, the capital of Romania, is a high seismic risk town, ranked as "the 10th capital city worldwide in terms of seismic risk" and "one of the cities with highest seismic risk in Europe".⁴ A highly reputed Romanian expert, Dan Lungu, maintains that Bucharest is the European capital with the highest seismic risk,⁵ and his claim seems to be vindicated by the Seismic Hazard Distribution Map of Europe, showing Bucharest placed in the most dangerous bigger seismic area in Europe.⁶ The Romanian capital is a crowded city, having officially almost 2 million inhabitants, but in which there always are many more people actually living (even if unregistered), working, shopping or visiting temporarily; according to some

1 UNO *World Risk Report 2012*, online document at the address <http://www.ehs.unu.edu/article/read/worldriskreport-2012>, p. 63.

2 For a short but edifying explanation of this ranking see Iuliana Armaş "Earthquake Risk Perception in Bucharest, Romania", in *Risk Analysis*, Vol. 26, No. 5, 2006, p. 1224.

3 UNO *World Risk Report 2012*, op. cit., p. 21 and p. 15.

4 Iuliana Armaş, "Earthquake Risk Perception in Bucharest, Romania", op. cit., p. 1224.

5 Dan Lungu, in an interview published by the newspaper *Adevărul*, see the address: http://www.adevarul.ro/actualitate/eveniment/Bucurestiul-ridicat-risc-seismic-Europa_0_42597031.html#. See also Dan Lungu's presentation at the *World Conference on Disaster Reduction*, Japan, January 18-22, 2005.

6 See the map posted by the World Health Organization: <http://www.euro.who.int/en/what-we-do/health-topics/environment-and-health/Climate-change/news/news/2012/03/where-do-natural-hazards-pose-a-public-health-risk> (retrieved on 12.11.2012).

estimates, on a normal working day up to 3 million people can actually be present in the larger metropolitan area of Bucharest (a figure, however, that could not be verified systematically). These dimensions constitute the very first factor supporting the conclusion that societal risk is high here. Among other factors consolidating the conclusion that Bucharest is particularly vulnerable to seismic hazard, Romanian experts enumerate: "the high density of inhabitants, especially within the residential districts with blocks of flats; the old public utility fund; the out-of-date infrastructure; the numerous industrial parks that are undergoing a restructuring process, not to mention the inefficient organization of civil protection and poor education of the population regarding seismic risk".⁷

The level of environmental risk is significantly amplified by the existence of a big nuclear power plant at Cernavodă,⁸ less than 160 km. (in a straight line) from Bucharest, while both the capital and the nuclear power plant are situated at less than 200 km. distance (in a straight line) from the most active seismic area in the Vrancea region (south-east of the country). As Mircea Radulian, Scientific Director of the National Institute for Earth Physics emphasises, the Vrancea seismic area is dangerous even if it is 200 km. away from the nuclear plant.⁹ The Romanian expert specifies that it would take a magnitude 8 (Richter Scale) earthquake to cause an explosion at the nuclear power plant – that, of course, is a statistically rare phenomenon. But, although unlikely over short periods of time, such an event unfortunately remains entirely possible. Statistical data shows that 7.5 magnitude earthquakes occur in the Vrancea region every 80 years;¹⁰ 8 or 9 magnitude earthquakes are much rarer, but of course not excluded. Thus, a very big earthquake taking place in that region can affect directly both Bucharest and the nuclear power plant, and eventually damage done to the nuclear facilities can generate a nuclear accident with grave consequences to the capital and its population. Risks and dangers should thus be discussed also from a combined 'seismic plus nuclear hazard'-perspective, which in fact is almost never done, because the Romanian authorities avoid discussing combined risks and instead tell people simply that big earthquakes are very rare and that the nuclear facilities are very safe.

Despite such soothing declarations, Romania could be confronted some day with an extremely dangerous situation, the mere possibility of which creates huge responsibilities for its inhabitants and its (central or local) authorities. Both the population and the institutions fail systematically to react adequately to this risk, but in the present paper I shall only deal with some institutional failures, more precisely with their moral aspects.

Although it has been claimed that "politics, as a practice, whatever its

7 Iuliana Armaş, "Earthquake Risk Perception in Bucharest, Romania", op. cit., p. 1223.

8 The Cernavodă nuclear power plant has two reactors of the CANDU type. For more details on the power plant and nuclear energy in Romania, see <http://www.world-nuclear.org/info/inf93.html>.

9 Mircea Radulian, interview posted on the site www.ziuanews.ro, at 02.05.2012; see <http://www.ziuanews.ro/dezvaluiri-investigatii/romania-trece-sub-tacere-un-pericol-nuclear-la-cernavoda-de-tip-fukushima-15122> (retrieved on 12.11.2012).

10 Iuliana Armaş, "Earthquake Risk Perception in Bucharest, Romania", op. cit., p. 1224 (quoting other sources).

professions, has always been a systematic organization of hatred” (Henry Adams), most people still think that politicians and political institutions do have moral duties as well, not only resentments and selfish interests. This is explained not only by the fact that ordinary people trust their incumbents and expect them to promote their interests, but also by the fact that the politicians present themselves as ‘trustees’ who aim at fulfilling their moral duty to protect and promote the interests of citizens.

Fiduciary duties: An analogy with medical ethics

Here I am starting from the premise that preventing risk of environmental crisis, coping with crises and mitigating their consequences are major moral duties of government (in its widest sense) towards its citizens. This premise can be taken as unproblematic, since risks and crises affect public safety, and the most diverse theories of government acknowledge that providing public safety is a central – and indeed an elementary – task of government. Thus, political disputations about the tasks and duties of government need not bother us here because the role of government as provider of public safety is probably the least controversial; with some (extreme) exceptions mostly connected to anarchism, even the interpretations that seek obstinately to generally minimize the tasks of political power take it as granted. Moreover, the very idea of political representation consolidates this task: *prima facie*,¹¹ the incumbents’ care for safety should reflect the voters’ care for the same good. In modern political regimes citizens expect both central and local governments to guarantee public safety and this moral expectation is part of the implicit contract between a citizen and a politician, by which the latter commits to representing the concerns of the former – thus, the moral obligation of the latter to deal with environmental risks and crises is beyond reasonable doubt. Adopting a term used in both agency law and business ethics, one could say that incumbents have a *fiduciary duty* to act for the citizen’s benefit (of risk avoidance, coping with crises and mitigation of their effects); but, of course, this duty is only a moral one, because it springs from mere public promises, not from legal commitments, as no proper (legally enforceable) contract exists between politicians and voters.

How exactly the fulfilment of such a fiduciary duty should be assessed is, of course, a complicated and possibly controversial topic. My proposal here will be to analyse a particular case by using, as standards of evaluation, a series of interrelated principles that are commonly accepted in several areas of ethical decision-making (including, most notably, the field of medical decisions) on matters implying risks: *the principle of respect* (for the autonomy of the people concerned, i.e. exposed to risk), *the principle of informed consent* (of those who run risks), *the principle of non-manipulation* (of all stakeholders). Although initially conceived as normative guides for binary, private, relationships of the ‘physician–patient’ type, as shown in the classic *Principles of Biomedical Ethics* by Tom Beauchamp and James

11 Only *prima facie*, because, as shown below, there are good reasons to claim that the incumbents’ concerns with environmental safety should be even greater than the citizens’ concerns.

Childress,¹² these principles exemplify some vital implications of any fiduciary duty in matters implying risks, and to that extent they can also be used as guides for clarifying other relationships, such as the more complex relationship between politicians/institutions and citizens in the area of public decisions that imply risks for a whole community.

The principle of respect itself can be interpreted in many ways and its implications can accordingly be seen in various ways. I will not attempt a general approach here, but rather restrict my discussion to some relevant aspects inspired by the Romanian case – some aspects which, moreover, can be analysed by relying on a less controversial view of this principle. Despite the lack of a unitary and undisputed interpretation of respect and of its implications, there actually are some weaker implications of the principle of respect that can hardly be disputed. In order to avoid controversies and objections that cannot be dealt with here, I shall only address such implications.

The duty to get informed consent from the people exposed

For instance, it can hardly be denied that respect for citizens implies that they should be (at least) consulted on matters that involve some possible risks for themselves and their descendants. This modest requirement seems to be inseparable from democratic government, and it has always been acknowledged, even if in very vague wordings like those used in a classic article on risk perceptions by Slovic, Fishhoff and Lichtenstein: “asking people how they view technological hazards is a valid component of representative government”.¹³ A weaker version of the principle of respect as implying consultation is hard to imagine; in fact, Slovic et al. only recognize a right, not also a duty, to ask people what they think about hazards. But the idea that the incumbents also have a duty to consult people on such matters is very common and hardly controversial any more – authorities in any democratic country accept it officially. The problem is that consultation is such an ambiguous idea, that almost everything, from simple interviews and public opinion polls to a fully-fledged referendum, can be taken as proving that the duty has been fulfilled. In Romania, a referendum on nuclear energy has never taken place, although several such national consultations were organized, sometimes on rather minor dilemmas like *reducing or not the total number of elected representatives* in the Parliament – a matter that is neither extremely urgent, nor very dramatic in its implications. Why do Romanian authorities avoid organizing a referendum on nuclear energy, which, especially after the Fukushima accident, appears to be the decent thing to do from the point of view of democratic consultation? There are several interconnected answers.

The first is that, in contrast with the situation in other countries, public opinion has never asked for consultation imperatively or at least insistently. Although some

12 Tom L. Beauchamp, James F. Childress *Principles of Biomedical Ethics*, Oxford University Press, sixth edition, 1985-2008.

13 Paul Slovic, Baruch Fischhoff, Sarah Lichtenstein “Why Study Risk Perception?” in *Risk Analysis*, Vol.2, No. 2, 1982, p. 92.

NGOs and some ecologically-minded public figures have insisted that Romanian citizens should be given the right to choose on nuclear matters,¹⁴ the wider public has never raised such a claim in a significant proportion. Sociological research shows that despite the existence of seismic risk, only 10% of the inhabitants of Bucharest live with a constant fear of earthquakes; only 38% of men think that the seismic danger is high (while 62% of women have the same belief).¹⁵ There are no data on how people evaluate the combined danger of an earthquake and a nuclear accident at the nuclear power plant in Cernavodă, but it is rational to suppose that the probabilities attributed by the public to such a devastating combination of events are even smaller. There are many reasons for this excessive serenity. Some are obvious and banal: people do not have enough information on the relevant risks; and they are manipulated by authorities into believing that risks are very small or non-existent (I shall elaborate on that below).

But there are reasons of much more interest to us. It is well known that people tend to neglect any danger with low probability of occurrence, even if characterized by huge potential loss;¹⁶ this, Slovic et al. claim, is understandable: “limitations of people’s time, energy and attentional capacities create a finite reservoir of concern. Unless we ignored many low-probability threats, we would become so burdened that any sort of productive life would become impossible”.¹⁷ The sociological research conducted in Bucharest has confirmed this explanation: the most frequent motivation for not caring about the seismic danger has been “the immediate pressure of other current problems, mostly economic ones”.¹⁸ People are overwhelmed with urgent needs and major difficulties, so that they instinctively ignore low-probability risks and focus on more immediate pressures.

It is precisely this fact that opens some perspectives which are interesting from the moral point of view. While ignoring (some) risks is an attitude that can be understood and perhaps “forgiven” when ordinary people are concerned, a similar attitude manifested by authorities seems unforgivable. Persons can simply be too busy or too much affected by lack of resources to act with precaution, but authorities cannot use the same excuse, because they have both the power to create specialized institutions (in order to manage risks and prevent disasters) and the power to allocate resources to this aim – and they are expected to use these powers in order to protect people. In our medical ethics’ terms, the patient can understandably be careless or negligent, but there can be no moral justification for a physician’s negligence or lack of concern, because carefulness is a major moral duty associated with the medical profession. Analogously, as long as they have the moral duty to prevent environmental crises and to guarantee public safety, the political institutions cannot legitimately opt for simply turning a blind eye to seismic and nuclear hazards and for

leaving ordinary people’s peace of mind undisturbed in this respect. The Communist leaders who have decided to place the nuclear power plant at Cernavodă, in a seismically dangerous zone, without seeking some sort of democratic approval from citizens have of course been irresponsible. But the operational activity of the first reactor in this plant began in 1996, and the operational activity of the second in 2007, again without any sort of democratic approval being sought. Romanian authorities have made no attempt to get the informed consent of the population on hazardous nuclear activities, and this is a proof of illegitimate ‘imposing risks’ conduct. The immoral character of making such decisions that impose risks upon people has never been considered and discussed publicly, the general tendency being to spread the feeling that there was no ‘real’ risk. Romanian authorities that after 1989 took the continuation of nuclear activities in the same area for granted and omitted to organize a public debate or any public consultation on the matter, can thus be said to have not been more responsible morally than their Communist predecessors. To a great extent, it was ‘short termism’ that blinded them: improving economic conditions or creating new jobs as soon as possible and thus securing the sympathy of voters were seen as compelling immediate tasks in comparison to which securing informed consent on prevention of seismic and nuclear risks seemed to be only a minor issue.

Justified moral paternalism

The incumbents could try to justify their nonchalance in seismic plus nuclear matters by saying that their lack of concern was simply expressing the dominant attitude among Romanian voters (after all, politicians are supposed to represent their constituencies). Although from some purely political point of view, relying on an oversimplified idea of duty towards the electorate, might seem to be working well as a justification, from a moral point of view it is very weak. Let us remember that lack of concern for seismic and nuclear risks among the inhabitants of Bucharest has been explained by either lack of information, or by incapacity to cope with all their pressing current problems. Both elements tend to present the inhabitants as people with an impaired autonomy, in the first case due to *ignorance* and in the second due to *duress*. If the source of this handicap is lack of information, then the inhabitant of Bucharest should be compared with the person who was unaware of the danger of crossing an unsafe bridge, in the famous example given by J.S. Mill;¹⁹ the duty of the authorities is in such a case to impose safety measures, even if against the manifest intentions of the unaware person, since that is not a case of violating her interests, but one of promoting them despite her uninformed and thus inadequate decisions. As long as they represent the public’s interests for safety, the authorities have the fiduciary duty to promote these interests even in cases where, due to lack of information, the public itself simply does not ask for the adequate governmental measures. In such situations, there is a case for moral paternalism, as Gerald Dworkin has argued in his classic older text.²⁰ Dworkin used simpler examples, such

14 See, for instance, the appeal of the organization *Terra Mileniul III*, at the address: <http://terraiii.ngo.ro/date/b2d1f2f8f1bb3ec1206dd2e29da29cba/APEL.pdf> (retrieved 12.11.2012).

15 Iuliana Armaş “Earthquake Risk Perception in Bucharest, Romania”, *op. cit.*, p. 1229-1230.

16 Paul Slovic, Baruch Fischhoff, Sarah Lichtenstein, “Why Study Risk Perception?”, in *Risk Analysis*, Vol.2, No. 2, 1982, p. 90.

17 Paul Slovic, Baruch Fischhoff, Sarah Lichtenstein, “Why Study Risk Perception?”, *op. cit.*

18 Iuliana Armaş “Earthquake Risk Perception in Bucharest, Romania”, *op. cit.*, p. 1229.

19 J.S. Mill *On Liberty*, W.W. Norton and Co., 1975, Chapter V, Applications.

20 Gerald Dworkin “Paternalism”, in *The Monist*, Vol. 56, no. 1, 1972, pp. 64-84.

as imposing the obligation of wearing protective helmets upon motorcyclists, but the problem is the same: being empowered to protect and prevent, authorities have a duty to act even if the people concerned are themselves passive and indifferent.

If the source of the handicap of the inhabitants is their state of being *overwhelmed with worries and pressures*, then again the authorities have a moral duty to act for their benefit. In such a case, the fiduciary duty of politicians is similar to the fiduciary duty of physicians, who have to act for the benefit of their patients even in cases where the patients, overwhelmed by health problems, do not ask for certain beneficial actions. The incumbents cannot justify their lack of concern for public safety (in nuclear matters) by claiming that they simply expressed the lack of relevant concern among the public, just like a physician cannot justify her lack of concern for her patient's health by saying that the patient herself was unconcerned. Any attempt to use such a justification should be rejected with the obvious argument: 'precisely because the people to be protected cannot afford to manifest concern for some of their vital problems, those who have a fiduciary duty should be concerned and should consequently make sure that their interests are protected'; that is implied by the very sense of a fiduciary moral duty. Respect for people who run risks, like the inhabitants of Bucharest, implies preoccupation for preventing such risks, for informing people about them and for getting informed consent on the necessary preventive measures. Thus, the moral duty of authorities to prevent environmental risk should not only reflect mechanically the corresponding degree of preventive interest among the public, but, as I have already suggested,²¹ should also cover the cases in which the public itself does not manifest enough interest for its own safety because of its impaired autonomy (due to duress). Duress, as a temporary state, cannot justify abandonment of the patient by her physician, or of the public by government; on the contrary, it requires protective intervention from the agents having the fiduciary duty, for the benefit of those under duress.

There are, though, some objections that can be raised. The first one concerns institutional duress: what if government itself is under duress?²² If it can be proved that the government has acted under duress, then of course its neglect of some moral duties to protect the public against environmental risk can be excused. But in fact a regular government can rarely do that, because it takes a very severe crisis (like war in a very dangerous phase, for instance) in order to relieve authorities from some (and never from all) of their fiduciary burdens. More precisely, what is required is that the authorities prove that their lack of adequate concern for some vital interests of the citizens is justified by its absorption in attempts to protect other, equally vital, public interests.

A second objection relies on the idea of opportunity costs: there might be cases in which lack of governmental interest in taking protective steps could be justified by the excessively high opportunity costs of such measures. "Critics have been quick to put the blame on politicians and their apparent failure to prevent or at least reduce mortality from earthquakes. Yet, our theory suggests that in countries with

low quake propensity, failure to enact and enforce regulations for earthquake proof construction is not necessarily a failure, but may be perfectly rational, following opportunity cost considerations".²³ This, of course, makes perfect economic sense, but it is of a very limited moral relevance. If what we are interested in is saving lives (by reducing earthquake mortality and nuclear accidents mortality), then analysis in terms of opportunity costs is in fact analysis in terms of what kinds of spending are susceptible to save more lives, as compared to the available spending alternatives. Consequently, if governments avoid investing in preventive policies that reduce earthquake and nuclear accidents mortality, they should be able to show that the amount of money thus saved has been better invested in other policies that are susceptible to save even more lives than those preventive, anti-seismic and anti-nuclear disaster, policies – only such a proof can be relevant as a moral justification for having failed to fulfil the fiduciary duty of prevention. For instance, the authorities should be able to prove that the amount of money needed for anti-seismic and anti-nuclear accidents measures can be better used in order to achieve a greater reduction of child mortality. But such proofs can hardly be given. Due to the numerous uncertainties of the alternative scenarios, it is hardly possible to provide such a demonstration. In any case, Romanian authorities could never justify their lack of concern for anti-seismic and anti-nuclear accidents' policies by invoking their absorption in other, equally important, life-saving public policies. State investments in public health and in related life-saving areas have diminished constantly in the last twenty years, in correspondence with both the shortage of public funding and the newly and enthusiastically embraced dogma that all concerns for health and other vital needs should be privatized. At the same time, big investments have been made in areas that cannot be said to be of vital interest, as I shall mention below. There is thus absolutely no hope for Romanian public institutions to be able to show that they have managed to save more lives by using funds in the way they actually did, than they would have saved if they had spent them on anti-seismic and anti-nuclear accidents measures. Once again, what we have to deal with is sheer political irresponsibility, not a rational tradeoff between various ways of saving lives and of protecting vital public interests.

Moral irresponsibility in political activity

The degree to which Romanian authorities have manifested irresponsibility towards seismic hazards can be exemplified by highlighting the results of policies developed in Bucharest, in order to consolidate buildings affected by the 1977 earthquake and to prevent further damage and further casualties in case a new earthquake took place. The 1977 earthquake, of 7.2 magnitude (Richter Scale), has claimed 1570 human lives (90 per cent of them in Bucharest). More than 32,000 buildings in southern and south-east Romania have been destroyed or severely damaged. A program of

²¹ See above, footnote 11.

²² A famous case of government under duress is the one debated in *United States v. Bethlehem Steel Co.*, 315 U.S. 289 (1942).

²³ Philip Keefer, Eric Neumayer, Thomas Plümper "Earthquake Propensity and the Politics of Mortality Prevention", Policy Research Working Paper 5182, The World Bank Development Research Group Macroeconomics and Growth Team & Global Facility for Disaster Reduction and Recovery Department, 2010, p. 32.

consolidation of the most affected buildings has been devised, but its results can be deemed pathetic. Even today, after 35 years from the seismic event, there are 1,000 buildings in Bucharest “in a state of total or partial collapse”.²⁴

The expected losses, in case a big earthquake would take place again in the Vrancea region, are very high: “Should an earthquake similar to that in 1977 occur during the night, the most sombre scenarios conceived by the Building Research Institute, Bucharest (INCERC) (www.incerc.ro) indicate that the population of the capital city would drop by almost half (450,000 casualties). Approximately 6,500 people would stand no chance of survival”.²⁵ How did Romanian authorities act, in such an alarming situation? Incredibly, the process of consolidating the dangerous buildings is extremely slow. According to data provided by the mayor of Bucharest, there are 800 buildings in Bucharest with a significant degree of seismic risk that need consolidation.²⁶ Among these, at least 112 buildings run the highest seismic risk, and, being mostly blocks of flats, many thousands of persons are exposed. Despite this huge risk, according to information provided by the Romanian Ministry of Regional Development, on March, 4, 2012, until now only 15 buildings of the highest seismic risk have been consolidated.²⁷ At the same time, local authorities, as well as the Ministry for Regional Development, have systematically spent a lot of money for low priority urban improvements, like floral decorations, Christmas decorations, gadgets (such as big, expensive, ‘retro’-style, digital watches placed in some central squares in Bucharest) or various leisure facilities. Thus, the Romanian authorities could never prove that they have omitted to invest in preventive policies meant to save lives in case of earthquakes or nuclear accidents because they have focused on other kinds of life-saving policies. What in fact happened and it is widely recognized as such, was that a lot of money has been foolishly spent, often in relation to corruption, while vital measures for improving seismic safety have been indefinitely postponed or neglected.

The same Romanian government that managed to find time, energy and resources to organize referendums on such matters as a certain ‘reduction of the total number of members of the Parliament’, or some ‘particular changes in the voting procedures’, cannot now claim seriously to have been under duress and thus unable to organize a referendum on nuclear energy. In reality, Romanian authorities could easily manifest their concern for public safety by consulting the public, but it seems that they have no interest whatsoever to do that. Empirical research has proved that governments are susceptible to manifest concern for seismic dangers, such as mortality generated by the collapse of buildings, only where the public is

24 All the data in this fragment are taken from Iuliana Armaş “Earthquake Risk Perception in Bucharest, Romania”, *op. cit.*, pp. 1225-1226.

25 Iuliana Armaş “Earthquake Risk Perception in Bucharest, Romania”, *op. cit.*, pp. 1226, quoting other sources

26 See the information provided by the Mayor at: <http://stiri.acasa.ro/social-125/lista-de-cutremur-a-lui-oprescu-108688.html> (retrieved on 12.11.2012). The whole list of vulnerable buildings can be found at http://www.lasig.ro/documente/lista_cladirilor_cu_grad_de_risc_seismic.pdf.

27 See <http://www.curentul.ro/2012/index.php/2012030569432/Social/Doar-15-cladiri-cu-risc-seismic-ridicat-din-Bucuresti-au-fost-reabilitate.html> (retrieved on 12.11.2012).

capable of sanctioning their under-achievements: “In countries where citizens or members of the ruling party can more easily sanction leaders for poor performance, leaders are more likely to take – and to enforce – measures to prevent disaster mortality”.²⁸ As Romanian voters did not prove capable of sanctioning their leaders for poor performance, the incumbents are explicable not likely to take preventive measures, and even less likely to consult the public as regards such measures. In other words, the fiduciary duties are fulfilled only where the incumbents are afraid of electoral sanctions; where not afraid, they nonchalantly ignore their duties. This only confirms that *moral concern*, typically inspired by moral duties not by fear, is simply missing in Romanian political and administrative activity. The moral obligations towards public safety are forgotten, as long as fear of popular protest vanishes; respect for public opinion is even more elusive, as long as the incumbents are not afraid of negative votes. The moral point of view tends to disappear from governmental activities. While to some extent Romanian authorities feel politically responsible towards their constituencies or at least are afraid of their sanctions, moral irresponsibility reigns.

Institutional moral failure

Moral irresponsibility can be detected not only in governmental activities, but also in the activity of institutions created to protect the population from environmental risk, among which, for instance, are *CNCAN* and *ANDR*.²⁹ Due to its official mission, *CNCAN* should be permanently preoccupied with detecting nuclear risks, including those created by seismic hazard, and with preventing them. In particular, according to the ethical principles already mentioned, *CNCAN* should inform people correctly about nuclear risks and avoid manipulation of public opinion. But in fact, instead of concentrating on correct information about risks, *CNCAN* manipulates public opinion into believing that there are no actual nuclear risks in Romania; a careful analysis of its activity shows that in many cases *CNCAN* is more interested in allaying people’s fears and in reducing anxiety concerning risks than in informing the public correctly or in taking initiatives for safety improvement.³⁰ Thus, *CNCAN*, which should act mainly as a *protector*, in virtue of its fiduciary duty, does, in fact, often act more like a *promoter*.³¹ Due to lack of space, a full presentation of its

28 Philip Keefer, Eric Neumayer, Thomas Plümper “Earthquake Propensity and the Politics of Mortality Prevention”, Policy Research Working Paper 5182, The World Bank Development Research Group Macroeconomics and Growth Team & Global Facility for Disaster Reduction and Recovery Department, 2010, p. 8.

29 ‘*CNCAN*’ is the Romanian acronym for the National Nuclear Activities Watch Commission. For more information on the activity of this institution, see <http://www.CNCAN.ro/main-page/>. ‘*ANDR*’ is the Romanian acronym for the Agency for Nuclear Activities and Radioactive Waste. More about *ANDR* at www.ANDRad.ro.

30 The official position is very optimistic: *CNCAN* “makes sure that nuclear energy is used in Romania in a safe manner” - see <http://www.CNCAN.ro/acasa/despre-noi/mesaj-presedinte/>.

31 The distinction between *promoters* and *protectors*, has been developed by Lennart Sjöberg in his paper “Risk Perception by the Public and by Experts: A Dilemma in Risk Management”, *Human Ecology Review*, vol. 6, No. 2, 1999, p. 4.

activities cannot be done here, but an example can be given. Presenting soothingly the safety measures taken at the Cernavodă Nuclear Power Plant after the Fukushima accident, Vajda Borbala, Chairwoman of *CNCAN*, declared in September 2011 that this power plant can face safely a 7.8 magnitude earthquake, an event which, in fact, occurs only once in 1000 years.³² The implication of this official statement was that Romanians have nothing to worry about: the Cernavodă Nuclear Power Plant is very safe. Let us analyse this encouraging announcement a little further. Behind it, there is a familiar argument advanced by both experts in nuclear matters and politicians: the argument that seismic risks susceptible of creating nuclear risks are very small; since nuclear risk coming from earthquakes is created by a conjunction of such rare events, there is no objective reason to be worried. It is thus implied that nuclear activities should continue unhindered. When such lines of reasoning are followed by ‘promoters’ – investors interested in nuclear energy production – the complacency hidden in them is easier to understand. But when followed and advertised by incumbents expected to protect people, such arguments are simply outrageous.

Let us have a closer look at this matter. The claim that there should be no worry because the risk is small can be interpreted in several ways. First, it can be interpreted as complete denial: “if the risk is small, then the unhappy event – big earthquake plus nuclear accident – simply won’t happen”. To naïve people, this can sound like good news, but it obviously is, in fact, a bad, misleading, argument. The fact that a combined dangerous event is statistically rare does not eliminate risk. Although so rare, an 8 magnitude (or more) earthquake can strike at any moment and can affect any generation, even ourselves. It is interesting to note that ordinary people seem to understand that, for they do not pay much attention to rarity. People are not relieved by the sheer rarity of disasters; they are more interested in ‘no harm’-guarantees, than in small probabilities:

“People want to avoid disastrous consequences no matter how small the experts assert their probability to be. Experts who vouch for the probabilities as being negligible are taking a big risk. Unexpected events occur all the time, and today’s complex technologies tend to behave, at times, in unexpected ways. Demand for risk mitigation is not strongly related to perceived risk, but to the expected consequences of accidents or other unwanted events”.³³

Obviously, the general public’s demand for ‘no harm’-guarantees is not satisfied by merely invoking the small probabilities of risk. When authorities claim that “safety is guaranteed, because the risks are small”, this claim shows that they are not really answering demands for ‘no harm’- guarantees, but simply deviating attention from possible harms to the rarity of very dangerous events. For *promoters*,

it is not necessarily a failure, since promoters are not defined by a fiduciary duty to defend; but for *protectors*, who are defined by their task to protect, neglecting threats of harm posed by improbable risks, despite the fact that people have a right to be protected against them, is obviously a failure and a fault. The moral obligation of protective institutions is to defend the legitimate claims of population, in our case claims to safety expressed as requests for ‘no harm’-guarantees. Authorities fail to fulfil this obligation, when they adopt a ‘technical’ point of view from which harms are irrelevant because probabilities are small. This is first of all a moral failure, but it is also a legal one, as long as the official mission of bodies like *CNCAN* is to protect the public and the community, not to underrate risks. It can of course be objected that such strong guarantees cannot be given, if nuclear activities are to continue – which is the familiar objection raised by promoters. But that is not a good argument from a moral point of view, as long as authorities have failed to present publicly, clearly, the dilemma “either we have nuclear activities with no guarantees against unlikely but possibly huge harm, or we have ‘no harm’-guarantees by abandoning nuclear energy altogether”. When technologies cannot provide ‘no harm’-guarantees, the main moral duty of authorities, springing from due respect for the people exposed, is to tell that to the public and ask for its informed consent on continuing or discontinuing the risky activities. Romanian authorities have permanently failed to fulfil this duty.

Someone could also be tempted to object that institutions and incumbents are not expected to answer popular concerns and fears *if such concerns and fears are irrational*. But that is precisely the main point here: concerns about an unlikely event are not irrational at all, when the expected consequences of it are huge or the resulting loss is great (they would only be irrational if the loss was both unlikely and small). Although statistically infrequent, the combined disaster of a big earthquake and a nuclear accident is still possible, and its dramatic consequences make concerns perfectly rational, for although its probability is small, its societal risk is very great. Thus, popular worries about such a disaster are not irrational at all and the citizens can legitimately complain that their fiduciary agent, *CNCAN* for instance, is neglecting its moral duty to protect when it is manifesting complacency about nuclear safety. Obviously, the moral duty of *CNCAN*, as a fiduciary agent, is to adopt the perspective from which citizens judge things and assess dangers, e.g. by using as a criterion the dimensions of societal risks, and not the mere statistical probability of physical or technological events (a probability that leaves out the very important aspect of possible human loss).

But probably the preferred interpretation of the above-mentioned argument will not be that the disaster won’t come, but rather the following: “due to its rarity, the disaster won’t strike soon, and thus we won’t be affected, and neither will be our immediate descendants; the disaster is not imminent, so why should we worry about it?” This second interpretation should be rejected too, for several reasons. On one hand, it is a mistaken interpretation because the rarity of the event does not guarantee its ‘lateness’: the fact that a great disaster is statistically rare does not imply that it will take place very late (from now), some time in a very distant and foggy future. The seismic plus nuclear disaster *can even happen any moment now* (despite the fact of being very unlikely that it will). Moral sensitivity should make

32 Vajda Borbala’s statement, on 16.09.2011, has been reported officially by the Romanian news agency *AGERPRES*, and can be read at <http://www.agerpres.ro/media/index.php/economic/item/119363-CNE-Cernavoda-poate-rezista-la-un-cutremur-de-pestre-8-grade-Richter-fara-a-fi-afectata-siguranta-functionarii.html>.

33 Lennart Sjöberg “Principles of risk perception applied to gene technology”, EMBO Report 2004 October; 5(Suppl. 1): S47–S51.

us concerned about the fact that, although unlikely, the disaster could still strike immediately and affect people. This can be proved by resorting once again to our analogy between the moral duty of a physician to protect patients and the moral duty of an institution to protect citizens. Here is an example of how a morally sensitive medical expert thinks: “Risk is probabilistic, and the existence of a 1 per cent risk of death from a particular procedure does not identify which 99 patients will benefit without detriment, and which one will die without any benefit. Even if risks were known for every age of patient and for every stage of a disease, the problem would remain: will I do good or harm to this patient?”³⁴ Analogously, a fiduciary agent of Romanian citizens should ask: “even if risks of seismic plus nuclear disaster are small, the problem remains: what if such a disaster strikes immediately?” That is, from a moral point of view general probabilities are not enough: small general probabilities of harm do not eliminate moral concern for possible harm in a particular case. The medical expert is not satisfied with the mere statistical rarity of the harmful consequences; he is worried by what could happen *to some particular people*, the interests of whom he feels responsible for. Analogously, the fiduciary agents required to watch public safety should be worried by what could happen to citizens when a seismic plus nuclear disaster would strike, instead of being very serene because such an event is unlikely. When institutions and incumbents neglect to worry in this sense, they manifest some sort of moral deficiency: they lack both moral sensitivity to the possible drama of present generations and moral responsibility as fiduciary agents. But the same should be said concerning future generations. Suppose that the disaster will not happen in the near future, but much later. No generation we are familiar with will thus be affected, but only some generations we know almost nothing about, which have a very indirect and weak connection to us – so that it is hard for us even to imagine what they look like intellectually and morally. We cannot easily identify with them, but that does not eliminate the moral problem of using technologies that are going to harm. The fact that a seismically induced nuclear accident will affect *others*, not the ones we care most for, does not diminish moral responsibility. For any universalistic ethics, distance in time does not matter, since the ‘Damocle’s sword’ character³⁵ of nuclear technology remains unchanged: some future generation can still be harmed. Which one exactly will suffer is morally irrelevant, as moral reasoning behind a Rawlsian ‘veil of ignorance’ can prove. The fiduciary agents have moral duties towards all generations.

One can of course hope that the disaster will strike after the decommissioning of the nuclear power plant, but that is nothing more than a hope – and in no way an argument.

34 Sir Edward Pochin “Risk and Medical Ethics”, *Journal of Medical Ethics*, 1982, 8, 180-184, p. 180.

35 The ‘Damocles sword’ as a label for risks like the nuclear ones has been proposed by Ortwin Renn. See O. Renn, A. Klinke. “Damokles-Schwerter und KassANDRa-Rufe. Empfehlungen für die Kommunikation von Risiken”, *Ethik Magazin*, Heft 2, 3. Jahrgang (2001), 30-39.

Moral failures and conflicts of interests

The most pernicious mystification by which some institutions manipulate public opinion into feeling safe from seismic plus nuclear hazards is perhaps the use of purely geophysical or technological criteria for assessing risk. Thus, institutions like *CNCAN*, but also politicians and experts, decide upon citizen’s safety by using such criteria as ‘the probability of an 8 magnitude earthquake’ or ‘the probability of a ‘melt down’-accident in a nuclear plant’. Obviously, such criteria completely leave out both the harm component of individual risk and the societal aspects of risk. But what is often forgotten is that, from a moral point of view, using such criteria means ‘betraying’ the persons to whom incumbents and institutions have a fiduciary duty. Real persons (as already mentioned above) are not interested in general probabilities, but rather in the harmful consequences that people could suffer. Such harmful consequences do not depend exclusively on general probabilities, but also on particular social conditions which may amplify risks. Perhaps the biggest ‘betrayal’ of people’s interests by the incumbents and the institutions meant to protect them consists in the neglect of the social amplification of risks.³⁶ Risks are clearly amplified and harm to people is surely increased by many social factors: “Social amplification of risk denotes the phenomenon by which information processes, institutional structures, social-group behaviour, and individual responses shape the social experience of risk, thereby contributing to risk consequences”.³⁷ Romania is a country in which many peculiarities susceptible to amplified risks do exist and are widely acknowledged: institutional inefficacy and institutional failure have reached dramatic levels, lack of social capital is acute, law-abidingness is reduced and so on. It is highly probable that these peculiarities generate supplementary vulnerabilities for citizens, inasmuch as they diminish the social capacity to cope with both seismic risks and nuclear risks. This amounts to amplification of the probability that a big earthquake plus nuclear accident would lead to disaster, and the disaster to huge losses in Romania. By omitting to take into account the social, institutional, and psychological risk-amplifying factors, authorities simply neglect huge vulnerabilities that make the actual situation of the population much worse than expected from some general geophysical and technological point of view. The error made in so doing can be compared to the error of a physician who would take into account only general risk implied by statistics, like “among male adults malady M occurs with a probability of 20%”, while ignoring the specific factors of risk characterizing the particular patients under scrutiny – factors that increase very much the probability of getting ill for those particular patients. The patients under scrutiny could, of course, legitimately complain that the physician has irresponsibly neglected some of their particularities and hazards, and that he has thereby made misleading, over-optimistic, predictions about their health prospects. Analogously, when experts and incumbents inform people about the existing seismic and nuclear risks by simply reporting the natural and technological probabilities while neglecting the social amplification

36 For a complex view of the social amplification of risks, see Nick Pidgeon, Roger Kasperson, Paul Slovic (eds.) *The Social Amplification of Risks*, Cambridge University Press, 2003.

37 Kasperson et al. *The Social Amplification of Risk*, p. 181.

of risks, they can be said to manipulate the population with misleading, over-optimistic predictions about the dangers created by such events in the particular case of Romania. That can thus be seen as a ‘betrayal’ of the interests of the population to which they have a fiduciary duty. Obviously, people expect the authorities to judge things and to assess dangers not by simply looking at some general statistics for natural and technological incidents, but by taking into account all the relevant particular factors that can increase risks and damages for those exposed, exactly as the patients expect the physician to make predictions not by simply using general mortality statistics, but by taking into account the particularities which might improve or worsen their survival prospects in a certain period of time. Such expectations, implied by the fact (mentioned above) that people are not interested in sheer probabilities but rather in the ‘no harm’-guarantees, are both normal and legitimate, as long as both authorities and physicians have a fiduciary duty to those exposed to risks. Failing to act in accord with these expectations, the incumbents fail to fulfil their moral duty to people. In both cases, the moral failure has the same cause: the trustees’ omission to care about the peculiarities of the situation’s characteristics to the persons they were meant to protect.

A similar error can be detected in the area of safety measures. Both experts and politicians insist proudly that Romanian authorities have succeeded in enforcing the same safety standards that international organizations like IAEA impose and that the developed countries themselves enforce. This pride is understandable for a developing country obsessed with its own technological and institutional backwardness, preoccupied by ‘convergence’ with the developed world and confronted permanently with failures in its attempts to ‘catch up’. But while compliance with internationally recognized safety standards certainly is a necessary condition, it is not also a sufficient one. Due to its particular vulnerabilities, emphasised also by international assessments like the *World Risk Index*,³⁸ Romania might be required to use higher standards of safety and to take supplementary precautionary measures, as compared with many developed countries. The satisfaction with which *CNCAN* and *ANDR* present sheer compliance as an achievement can also be seen as a signal of complacency. But the general situation of Romania, as regards its capacity to prevent disasters and to cope with them, is too bad to allow for self-satisfaction.

Since the vulnerabilities created by social risk-amplifying factors are at least partly due to their own poor achievements, central authorities and specialized institutions are of course very interested in omitting to acknowledge the particular vulnerabilities of the Romanian population. This fact raises a new suspicion: the moral fault can be greater than it might seem, being connected not simply with poor political and administrative performance but also with *hidden special interests*. Is the institutional failure to deal with concerns about seismic plus nuclear hazards merely a consequence of complacency and negligence, two organizational vices relatively easy to eliminate? Unfortunately, there are some reasons to think that the situation is worse than that: institutions like *CNCAN* and *ANDR* are characterized by

a built-in conflict of interests which incapacitates them systematically (not legally, but in practice). On one hand, these institutions are designed to control potentially hazardous activities and consequently they strive to fulfil their task of making sure that nuclear activities will not put people at risk; in this respect, they are ‘natural enemies’ of all the promoters of nuclear technology. On the other hand, though, the same institutions have the task to issue permits, certificates and clearances for nuclear activities *and they get much of their funding from these licensing activities*. In this respect, they somehow become ‘natural allies’ of the promoters. Thus, *CNCAN* and *ANDR* are at the same time protectors (against nuclear risks) when they fulfil their duty to check and verify, but also promoters, interested to cooperate smoothly with nuclear enterprises, regarding activities from which they stand to gain. Instead of being only protectors, entirely committed to protection, they somehow combine protection and promotion, which inevitably creates a temptation to compromise and sometimes a whole mess. The requirements of an adversarial logic, that is beneficial for checking tasks, are thus defied. Using once again our analogy with medical ethics, it can be said that the situation of *CNCAN* and *ANDR* is comparable to the situation of a physician who is simultaneously asked to protect patients, but also to cooperate with ‘big pharma’ in promoting some drugs and some medical treatments based on them. The conflict of interests is evident, and the likeliness that inadequate care for the patients might ensue is also evident. In the same sense, it is likely that Romanian institutions cannot take care adequately of the people exposed to seismic plus nuclear risks as long as they are doubly committed to protection and promotion. Laxity in compliance with safety standards and a habit of being ‘economical with the truth’ when information about hazards and vulnerabilities should be made public are to be expected, as long as such institutions are interested in protecting their funding and also their own existence. Why should an institution that justifies its own existence by watching nuclear activities be eager to acknowledge that these activities are too dangerous, too expensive (in case the highest standards of safety are to be enforced) and should perhaps be interrupted? Such sincerity would be suicidal, and institutions are never tempted to commit suicide. We thus have to notice a perverse consequence of the institutional design of the Romanian ‘anti-nuclear hazards’ protection system: the institutions designed to detect and disclose nuclear dangers are themselves at least partially interested to conceal alarming information and to manifest optimism about risks the protectors are bound to promote. Their failure to inform correctly, to seek informed consent and to avoid any manipulation is thus almost inevitable: their moral failure is, in a certain sense, built-in.

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³⁸ I have already mentioned that the *World Risk Index 2012* emphasizes the high susceptibility of damage and loss in countries like Romania and Moldavia. See above, footnote 3.

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Ethical Attitudes toward the Environment: The Romanian Case

Adrian MIROIU

Introduction

"In the thick forests around Baia Mare, 240 miles northwest of Bucharest, the toxic emissions of this metallurgical center have cut plant growth in half. About one third of the roughly 30,000 acres of forest have been devastated. Some trees have lost up to two thirds of their foliage. Even in the least affected areas, acid rain has covered the leaves with brown spots. [...] The two main culprits, the state-owned Romplumb and Phoenix plants, are still operating, spewing sulfur dioxide and lead into the air at levels 100 to 200 percent over the Romanian norms".¹

This terrifying description of twenty years ago has impressed many readers of *The New York Times*. At that time, the Romanian national television repeatedly broadcast reports on the environmental tragedy in the Northern part of the country; but quite a few people in Romania trembled at those images, and even so, they did not find themselves determined to act. As *The New York Times* acidly commented, 'The city government has brought the two plants to court, seeking damages of \$3,000 for each day of operation. But few people take the move seriously'. The issue I would like to take into account in this paper is why environmental issues (including cases like pollution in Baia Mare) were not perceived in Romania even in the nineties as problems in need of careful, reasoned examination and resolution. I shall not spend much time with the well known claim that in countries characterized by huge economic problems concern for the environment is seen as a luxury, as opposed to more pressing decisions. To quote again from *The New York Times*:

"The human cost is appalling. For Baia Mare's 150,000 residents, life expectancy is 50, nearly 20 years below the Romanian average. Children in a health survey conducted by UNESCO show high deposits of lead in their bones and teeth. Chronic bronchial diseases are endemic [...]. 'We put our protests', Petre Mărcuță, state secretary of the Ministry of Environment in Bucharest, said. 'But given that we don't have legal rights and because of the grave economic situation generally, we'll have to wait a little longer for the necessary means to make a difference'".

These comments are undoubtedly correct; but they point only to surface and circumstantial beliefs and attitudes, while leaving unquestioned the deeper roots of

¹ *The New York Times*, 1992. August 16.

the prevalent beliefs on, and attitudes toward the environment in today's Romania.²

The web of domination

Environmental ethics seeks to broaden the scope of moral concern by arguing that concepts like duty, obligation, respect or rights genuinely apply to items in the natural world; the range of these items varies from theory to theory, steadily extending from higher animals to all living organisms, to species, ecosystems, land and even Earth. Influential environmental philosophers see this movement as a final step in a long process of turning away from the merely particular (myself, my family, my clan, my fellow humans, etc.) to the universal. Selfishness (disguised in traditional Western ethics under some brand of "human chauvinism") was completely discarded and, as a last successful generalization, nature was recognized as morally considerable.

The underlying assumption of this position is that of a close association of ethical assessment with universalization and abstraction. Environmental ethical theories aim at putting forward universalizable maxims, in the form of ethical principles and rules of conduct. Many authors devoted a large space to stating and defending principles and rules, and were much concerned with the methodological requirements for accepting a principle or a rule.³ When concrete cases were in need of concrete resolutions, the strategy was to produce new, more substantive principles, along with some second-order principles to regulate issues of priority in applying the first-order ones. For example, if we cannot avoid being exposed to some dangerous or harmful organisms, Taylor's "principle of self-defence" permits us to protect ourselves even by destroying them.⁴ We may act in a certain way because we are guided by a general principle. But the ethical theory must also contain some new (and general) second-order principle entailing that in any case of that sort the principle of self-defence takes priority over the (general) principle of respect for living organisms.

This picture was, however, subject to strong criticism from various directions. First, some feminists questioned the emphasis on abstraction and universalization, and the implicit disregard of the particular and the emotional. They argued that when these are set aside as irrelevant or suspect, as subjective or personal, the only conclusion to emerge is that the basis of morality consists in rules of abstract reason, in impersonal procedures best exemplified in the public sphere.⁵ As V. Plumwood put it, "The opposition between the care and concern for particular

others and generalized moral concern is associated with a sharp division between public (masculine) and private (feminine) realms. Thus it is part of a set of dualistic contrasts in which the problem of the Western treatment of nature is rooted. And the opposition between care for particular others and general moral concern is a false one".⁶

Second, the establishment of grounded principles for treating new entities is often regarded as a mark of progress. But is it necessarily so? If successful at all, would theories of environmental ethics (i.e., structured collections of first-order general principles and second-order general priority principles) be signs of a moral improvement? As far as environmental ethicists are committed to an affirmative answer, it may be argued that they are wrong. To see why, let me start with an analogy. Suppose I learned that in a certain country, say in Eastern Europe, a spectacular increase in justice happened in the first five to ten years after the collapse of the old regime. Fair decisions, subject to impartial and procedural mechanisms, derived from general principles, largely replaced the old and unbearable burden of lack of liberty, and other unjust constraints in public life. The political improvement is surely undeniable. But can we say, from this information alone, that this increase of justice is associated with an overall moral improvement? Well, it depends. "[A] gain in justice can come about in one of two ways; it can arise where before there was injustice, or it can occur where before there was neither justice nor injustice but a sufficient measure of benevolence or fraternity such that the virtue of justice had not been extensively engaged".⁷ In the former case, we can hardly doubt the moral improvement.⁸ But, as M. Sandel argues, things are not so very straight in the latter case. For example, in a (more or less ideal) family or group of friends, relations are governed in large part by spontaneous affection, by generosity and care. Claims of fair shares are rarely made, and even if one gets less than she would under a distribution governed by principles of justice, this question is not part of the core of that way of life. But suppose that dissent appears and, due to growing divergent interests, affection, spontaneity, generosity and care come to be replaced by demands for fairness and the observance of rights, and that moral necessities are met with justice, such that no injustice looms. Parents and children, wife and husband, and friends regulate their interactions with all-encompassing justice. Are we inclined to see in this new situation a restoration of the full moral character of life in the old days? Is the arrival of justice a moral improvement not only over the conflictual situation, but also over the morality brought about by affection, generosity, and so on?

The case I have in mind is not that general principles of justice are not to govern modern societies; rather I worry about the inclination to allow them to invade the private moral sphere with similar standards and procedures. My background,

2 Things changed in the past years, with the pressure of the European Union to implement the *acquis communautaire*. However, I shall have in mind especially the case of the last decade of the 20th century.

3 See, for example, T. Regan, *The Case for Animal Rights*, University of California Press, Berkeley, Los Angeles, 1983, Chapter 4; P. Taylor, *Respect for Nature*, Princeton University Press, Princeton, NJ, 1986, Chapter 4; P. Wenz, *Environmental Justice*, SUNY Press, Albany, 1988.

4 P. Taylor, *Respect for Nature*, pp. 264-65.

5 See also the eco-feminist view developed in M. Miroiu, *Convenio. Despre natură, femei și morală*, Polirom, Iași, 2002.

6 Val Plumwood, "Nature, Self and Gender: Feminism, Environmental Philosophy, and the Critique of Rationalism", in L. Gruen, D. Jamieson (eds.), *Reflecting on Nature*, Oxford University Press, New York, Oxford, 1994, p. 145.

7 M. Sandel, *Liberalism and the Limits of Justice*, Cambridge University Press, Cambridge, 1982, p. 32.

8 In the two decades following the collapse of communism, the lack of moral principles in public life became obvious. Two of the most important issues in Romania were corruption and economic inequality.

as a person who lived his youth in the late seventies and in the eighties, makes me very cautious about the dangers such an inclination might involve. While in Poland or Hungary, for example, the signs of a new order could at least be dreamt of in that period, Romanian society fell under a strong authoritarian regime. The party-state aimed to bring under its regulation the entire public sphere. Any free economic activity was strongly prohibited, and no forms of civic organisms were permitted. A free press was not even conceivable. The ideological pressures extended to all members of the society. Mass media were under strong ideological control. The pressure of the public sphere over the private one was overwhelming.

A politicized public sphere governed by impersonal, general principles, no prospects for professional achievements, a more and more aggravated economic crisis, and a humiliating lack of even elementary means of subsistence. In this context, many people directed their energy to the private sphere. Family and groups of friends became the only realm of enjoyment and happiness; even in those social or political conditions, human flourishing was still pursued. And we found immense sources of self-achievement in close connections with parents and children, in friendship and in other interpersonal relations. Morality was seen to define behaviour and character traits in this private sphere — while the public sphere was largely regarded as outside of or external to morality. What is moral was understood in terms of affection, trust, care, generosity; while duties, obligations, or rights were immediately rejected as external, public and hence amoral constraints. Such a reaction was due especially to the general and impersonal connotation of these terms. Universal principles did not directly pertain to the concreteness of real moral interpersonal relations.⁹

In general, the individuals' attitude in that time was to find means to resist, and to individuate themselves as beings different from public oppression able to individually flourish. Their main strategy was to retreat to the private sphere of family and friendship, or the private study of culture, art or science. Moral boundaries were supposed to work there, in contrast to the alien, neutral and highly politicized public field of their life. To oppose was to retreat. To fight against aggression was to develop alternative niches in life, in which aggression was pointless. The attitudes one found in her or his family (e.g., care, generosity and trust) had nothing to do with the equity standards promoted by the party-state. One could not be neutral and formal with one's friends. Equity and fair shares were not

9 The contrast between more personalized, more concrete ties in society, on the one hand, and more unpersonalized, anonymous relations among people, on the other, is analyzed from multiple theoretical perspectives. See for example the sociological view, as expressed in Granovetter, M., "Economic Action and Social Structure: the Problem of Embeddedness", *American Journal of Sociology*, 91, 1985, pp. 481-510, and the economic view, described in Platteau, J.-Ph., "Behind the Market State – Where Real Societies Exist", *Journal of Development Studies*, 30, 1994, pp. 533-577; 753-817 or Greif, A., *Institutions and the Path to the Modern Economy*, Cambridge Univ. Press, 2006. A very general approach, applicable also to the Romanian society, both during the communist regime and in the transition period following it, is developed in North, D.C., Wallis, J.J., Weingast, B.R., *Violence and Social Orders. A Conceptual Framework for Interpreting Recorded Human History*, Cambridge University Press, Cambridge, 2009.

usually among the concepts one thought of when spending time, energy or money together with family or friends. Hence, to resist was to develop new and private forms of life. They were not directly opposed to the public one, but nevertheless they were outside its control.

My point is **not** that universal principles are not an essential part of an ethical outlook. I do not intend to rely on the plethora of anti-theorists, who deny the significance, or at least the usefulness, of ethical theories. Rather my argument is that an environmental outlook expressed only in terms of universal first-order and second-order principles should also make room for moral concepts like care, sharing, love, benevolence and so on.

What about the attitude toward nature? The official view during the communist period was that nature needs to be conquered, dominated and subjugated.¹⁰ The largest part of the Danube Delta, a huge area of wilderness, the home of hundreds of species of birds, was transformed into an industrial complex of reed harvesting. The ecosystems on the Danube holm were destroyed: in less than twenty years some million acres turned into irrigated land. On most mountain rivers, dams were built: around them, deforestation was extensive, and many years later one could still see monstrous, dilapidated sites of auxiliary buildings or materials. Nature was viewed instrumentally: its value was its capacity to fulfil collective goals put forward by political organizations. So, people's daily life and nature were in the same boat: fellow subjects to the same source of domination. Situations like the one in the city of Baia Mare were perceived as a case of sharing a common fate: people's life of misery had its counterpart in hard pollution. In this context, if relation to nature is to be moral, people's attitudes to it were more personalized. They were more concerned with concepts like empathy or care, than with duty, obligation or justice.

Redeemed nature

Talk about traditional Western attitudes toward nature is usually contrasted with two kinds of worldviews. One was born three or four decades ago somewhere in the United States (and maybe Australia), and baptized environmental philosophy, and specifically environmental ethics. The other kind comprises less recent, but neglected, rejected, undervalued or even lost worldviews, among them the native American or the aboriginal Australian outlooks.¹¹ (This type of approach is not peculiar to this field of inquiry. As some popular writers, seldom quoted by environmental philosophers noticed, certain views of modern physics display certain resemblances to Oriental ones).

At least two main fundamental attitudes toward nature can be discerned in the Western religiously-grounded world-view: the despotic and that of stewardship. The ultimate roots of these views are sought in the first chapters of *Genesis*, and the

10 In the communist period, economic planners failed to address issues like pollution, or destroying many natural sites. Environmental damage was nothing but an externality.

11 See, e.g. J. B. Callicott, *Earth's Insights: A Survey of Ecological Ethics from the Mediterranean Basin to the Australian Outback*, University of California Press, Berkeley, 1994.

entire evidence is provided from that book of the *Old Testament*. With a view to the non-despotic interpretation of *Genesis*, J. B. Callicott writes:

“The God of the Judeo-Christian tradition is transcendent, not immanent. The hypothesis of such a God therefore permits us to conceive intrinsic value as determined objectively, that is, from some point of reference outside human consciousness. From God’s point of view, we may imagine the creation as a whole and all its parts are ‘good’. Everything may not seem good from a subjective human perspective – poison ivy, mosquitoes, rattlesnakes – but they are all ‘God’s creatures’, and therefore good in His eyes. [...] The mastery of *Homo sapiens* over other species [...] is a sign of the fallen and cursed condition of *Homo sapiens*, not a privilege ordained by God”.¹²

This J-theism does not look at first sight incompatible with accepting the genuine, intrinsic value of natural items: they are part of God’s creation, and God saw that all of His creation was good. Note that an essential assumption lies behind such an account. An irreconcilable dualism between nature and divinity is taken for granted; the gap between the two realms is absolute, and any attempt to fill it is hardly intelligible. This interpretation might indeed allow for conceiving of natural items as good, from God’s view, and hence as intrinsically valuable. But, to use a phrase J. B. Callicott likes, their value is intrinsic only in a ‘truncated’ sense. For according to the Judaic tradition, when we say that something is good, our statement is quite different from the statement that God is good. God is so highly situated, and His creation is so low, that the value of such a being is hardly more than nothingness. God is absolute positivity, His creation – and nature, consequently – is negativity; genuine intrinsic value is with God, while the value of any part of His creation is only secondary and derivative. The value of each being can thus be intrinsic only if relative and dependent. The fact that the value of these beings is objectively determined is pointless: since it applies to everything and nothing is excluded, it is void; and since from that perspective the value of any creature amounts to nothing, actually we are left with no value at all. Callicott is right: the underlying premise of this position is the hypothesis that God is transcendent, and no transfer is possible from the transcendent realm to the natural, immanent one. But, as I shall try to argue, he is wrong when assuming that this view is *the* ‘Judeo-Christian’ one.

On the other hand, humans are in a sense opposed both to God and nature. Humans are also part of creation, and are as distant as any natural item from the transcendent divinity. Their intrinsic value is as dependent on God as in the case of any other being. Human life is sacred but only because it is the gift God gave us, not because it is mine or yours. However, humans were created in God’s image, after His likeness. In contrast with mere natural things, they are not just body. They have spirit. This gives them a special place in the world of creation. The dualism between body and spirit became the operational counterpart of the dualism between what

12 J. B. Callicott, “On the Intrinsic Value of Nonhuman Species”, in his *In Defense of the Land Ethic*, SUNY Press, Albany, 1989, pp. 137-38.

is divine and what is created. Body is nature, and it gives no chance to salvation. Our only hope is the spirit. Even within the stewardship tradition, which required reverence for nature, the contrast between what is immanent, created, and the transcendent God is absolute. The worth of natural items, if existent at all, is not inherently theirs; it is derived from the fact that they are part of creation.

The story that derived from this world-view is well known: body was associated with matter, with nature, with the negative, the inferior, the passive, dependence, the feminine, etc. The dualism resulted into a strong axiological asymmetry. Nature, women, passions, etc. were undervalued. And natural things were discriminated against as devoid of any moral standing.

I do not intend to linger over these issues. What I want to notice is that some authors like to use sharp distinctions in their environmental ethical theories. Are humans natural beings, and should what they do be assessed along with natural events? Or is this not the case, and should we sharply distinguish the results of human action from natural results? Or, is there a fundamental contrast between the moral status of my pet dog and that of a wild wolf?¹³ Is it possible to define wilderness as a total lack of human involvement?¹⁴ I do not favour such dichotomies. My reasons for holding this view will be apparent once I invoke a Byzantine account of nature.

Note first that here we face a profound tension with some specific Christian doctrines. Indeed, the doctrine of incarnation supported a ‘sacramental’ view of the whole of creation. The embodiment of Christ left ungrounded the absolute contrast between the transcendent and the immanent, and hence the derived dualism between spirit and body. If Christ was fully human, then His human body was also divine in character. Divinity was not degraded when transfigured in human flesh and bones. Rather creation was elevated to a new dignity.

It might be objected, however, that although within this doctrine the status of human beings is rendered differently, nature still remains in the opposite pole: Jesus Christ was a human, and it was the human milieu that got a new status. But this would not prohibit attitudes of domination and instrumental accounts of ‘mere natural’ things (as, in fact, the history of Christianity proved so many times). This argument is, I think, not correct. On the one hand, the divine embodiment cast doubts on the patterns of dichotomous oppositions and of hierarchical domination and subjugation. God’s humility and human haughtiness do not match very well. If it is possible for God to have a body, then the absolute gap between our spirit and the dust in us is rendered unintelligible. On the other hand, the attempt to limit the relevance of Christ’s embodiment to the human sphere is just one of many possible

13 For a critical perspective on this distinction, see Elliot Sober, “Philosophical Problems for Environmentalism”, in B. G. Norton (ed.), *The Preservation of Species*, Princeton University Press, Princeton, 1986, pp. 173-194.

14 See for example the opposing views of J. B. Callicott and H. Rolston, III. See J. B. Callicott, “The Wilderness Idea Revisited: The Sustainable Development Alternative”, in *The Environmental Professional*, 13 (1991), pp. 235-47; H. Rolston, III, “The Wilderness Idea Reaffirmed”, in *The Environmental Professional*, 13 (1991), pp. 370-77; J. B. Callicott, “That Good Old Time Wilderness Religion”, in *The Environmental Professional*, 13 (1991), pp. 378-79.

interpretations.

Byzantine or orthodox Christianity does not follow these lines. I cannot smother my surprise to find out that the orthodox view of nature was largely neglected in the works of environmental philosophers. For orthodoxy is an essential part of the European tradition, not an exotic world-view: Greeks, Serbs, Bulgarians, Romanians, Ukrainians, Russians, etc. are orthodox. For the orthodox mystic doctrine,¹⁵ Christ's embodiment did not concern just the human world. The human body is dust from the ground, and embodiment affected the entire nature. The meaning of His coming was to save humans both as spiritual **and** as bodily, natural beings. In this way, His sacrificial act meant that the **entire creation** was saved. According to the orthodox view, nature *per se* cannot be subject to being disvalued. It is not sinful, the eternal source of the evil. There is no room for somatophobia in the orthodox world-view, and the contrast between spirit and body has no strong support. Our bodily needs, our affections and passions, our pains and diseases are not evil in themselves. Flesh is not sinful. Human beings, as well as natural entities, are equally redeemed.

Natural entities and wilderness are not opposed to humans; although most of them are outside human control and understanding, they are not viewed as mysterious and dangerous sources of evil, for they are God's creation, and hence good. But notice a fundamental difference between this position and the one reported by Callicott: for orthodox Christianity, the fact that natural beings are intrinsically valuable is not to be explained by the fact that they look good from an absolute, transcendent and thus objective perspective. The explanation runs differently: natural beings are (objectively) intrinsically valuable because (1) humans are intrinsically valuable, as Jesus Christ proved by His sacrifice on the cross; and (2) humans and the other natural beings are on the same par. We share the same fate. Both humans and nature are part of creation and salvation brought by Jesus Christ concerns both humans and nature.

It would then be inconsistent to hold that we human beings are intrinsically valuable, while natural beings lack this sort of value. Since this would entail that we are only spiritual creatures, and that our bodies – dust from the ground – would not be valuable; this would require that embodiment was not total, that Jesus Christ had not human flesh and bones.

For orthodox Christians, the premise Callicott takes for granted, that "[t]he God of the Judeo-Christian tradition is transcendent, not immanent" is hard to defend. Jesus Christ is not intangible and far, too far from us. In fact, His dwelling is in our innermost nature. Insuperable dualisms, and the hierarchical views they entail are alien to and not supported by the orthodox doctrine. Nature, body, affection, the feminine, the subjective are not inferior; culture, spirit, the masculine, the objective enjoy no priority. The orthodox attitude toward natural items did not then involve the issue of including them in the moral sphere, as required when classical, primarily Western ethical theories were considered. For orthodox Christians, the fact that moral boundaries do not enclose exclusively the human world has profound,

15 Some orthodox thinkers argued that their doctrine is better describable as mystical rather than theological in nature.

religious grounds.

Environmental concern: Why is it ethical?

In the previous sections I argued for two theses. First, I argued that in the Romanian society non-personalized ethical principles and rules, grounded in universalizable maxims were associated, especially in the past half century, with the public, highly ideologised (and felt as amoral) sphere, controlled by an oppressive regime. If morality pertains to human flourishing, if it is to provide a guide on how we should live, then highly individualized connections with other humans or natural items are ultimately relevant. An environmental ethic theory following usual patterns of concentrating on first-order and second-order principles and rules would not be appealing for a Romanian philosopher. S/he would feel more comfortable with attempts to make principles and rules more substantive, full of concrete content and far from claiming to settle large collections of cases.¹⁶

Secondly, I argued that the Christian orthodox religion provides a basis for a genuine environmental ethic. Natural items have intrinsic value. On this premise, the argument runs further as follows: Christ redeemed humans from the original sin. Salvation concerned human beings in their integrity, as spirit as well as body. Since redemption involves also the body, nature is not evil in itself. So, it would be inconsistent to hold that human beings are intrinsically valuable, while natural items are not. Or, to put it in another way, nature is valuable because humans are valuable. Humans' having intrinsic value explains why natural items are not ethically neutral. Notice that the reference to the intrinsic value of human beings is essential. But this does not involve a subjective view on the value of natural items: the sort of value attached to them is objective. The inference involved is not that a natural item has intrinsic value because some humans value it as intrinsically valuable. It is a fundamental ontological fact that grounds the assertion of value: Christ's embodiment to redeem the entire creation. Objectivity is independence from human valuers. But it does not result from a transcendent assessment. Rather it comes from the inner nature of any creature, be it either human or natural.

These two theses have, on my view, a peculiar epistemological status. They are not the sorts of things one can directly include in her/his preferred theory. Indeed, they are not first-order principles concerning what it is for something to have moral status in a theory, i.e. to have rights, or to be a subject of duties or obligations, of our care or benevolence and so on. Rather these theses express general conditions on the acceptability of an ethical theory. They involve requirements one cannot ignore if she attempts to frame an environmental ethical theory. Suppose that, say in the Romanian cultural context sketched above, I want to put forth an ethical theory that genuinely concerns the environment. Then, its principles and rules must involve moral concepts like caring, sharing, love, etc., as well as rights, duties or obligations. Moreover, living with that theory should not have oppressive results: its principles should not compel ways of behaving in most intimate spheres, from a public, alien

16 H. Rolston, III, *Conserving Natural Value*, Columbia University Press, New York, 1994, pp. 26-33; 62-67; 97-100; 134-141; 228-234, and *passim*.

position; finally, the ethical theory should assume that natural items are valuable in themselves. Such constraints are not sufficient, though, to restrict options to one theory or to one sort of environmental ethical theory. A large palette is still available.

In this sense, my position is not subject to an obvious line of criticism, which runs as follows. It is doubtful that one can meaningfully speak about (all) Romanians' view on the environment. The very idea of investigating the idea of a *Volkgeist* might have had some respectability in Europe in the first decades of the past century,¹⁷ but it is an obsolete one today. So, to assume that there might be a Romanian ethical theory is not a promising strategy. I agree with this. But my argument was not concerned with an abstract, atemporal, and absolute notion of a Romanian *Volkgeist*. I only relied on some cultural features of today's Romanian cultural context that might have some relevance to accepting environmental ethics approaches. Secondly, and more importantly, I did not argue that Romanians' view is a certain, specific ethical theory. Rather, the implication was that such a context would provide us some structural (epistemological) constraints on acceptable ethical theories, rather than substantive ones. Those constraints concern the class of preferable ethical theories, not just a preferred one.

I think it is worth mentioning a sharp difference between the consequences of these structural constraints and the problems faced by authors who work in the 'standard' Western tradition. Environmental ethicists argued that a satisfactory ethical theory should make sense of the intrinsic value of natural items. The theory's range of application cannot consist only in human beings and their behaviour. It should essentially concern natural items. If one agrees with the basic position emerging from the Romanian cultural context, then the ethical theories she is likely to accept would naturally involve a genuine environmental concern. Keep in mind that this constraint is independent of, and prior to, framing particular ethical theories.

In the past decades enormous theoretical (as well as practical) effort was spent to acknowledge that environmental ethics is a respectable academic discipline. From my point of view, two different, although not always carefully distinguished theoretical accounts contributed to this achievement. On the one hand, the birth of environmental ethics involved construction, testing, and comparison of ethical theories. Some of these constructs proved to be better articulated, more promising, broader in scope and aspirations than others, while some such constructs failed when their internal consistency was investigated, or they were regarded as incompatible with certain considered ethical judgements. Not surprisingly, it was tempting for many environmental philosophers to locate around these lines the main controversies and results. For in this way their work looked similar to what other people, in highly esteemed academic fields, did: produce, test and use general, competing accounts of the relevant phenomena.

This picture is correct, if partial. It overlooks a non-competitive, rather co-operative theoretical activity of environmental ethicists, consisting of bringing about reasons, motives and arguments for acknowledging that cases in which natural entities were involved are genuinely ethical. A favourite example of H. Rolston is

17 Following German authors they were most acquainted with, many Romanian philosophers dealt extensively with this topic.

this: 'A bison fell through the ice into a river in Yellowstone Park; the environmental ethic there, letting nature take its course, forbade would-be rescuers from either saving or killing the suffering animal to put it out of its misery.'¹⁸ I wonder, was that decision an ethical one? I do not ask whether it was right or wrong. My question is, did it make sense to say that as a matter of ethical assessment we ought to let that animal die? Rolston is explicit: 'the environmental ethic there', nature took its course. Today we may agree that the premise that this situation is a moral one is apparent and not problematic. But was it so a few decades ago? Did we really think then that the decision of the park officer was ethical in character?

I want to argue that the birth of environmental ethics involved two different types of ethical activity. One such activity is the standard one of constructing, testing and comparing theories. But these aspects aside, a quite different kind of ethical activity was developed: it was extensively argued that moral boundaries are not established once and forever; that cases which reasonably (i.e., according to established ethical theories) were regarded as outside the scope of morality actually were misunderstood; that entities which reasonably were thought not to belong to the moral sphere actually could be said to deserve moral considerability. The former type of theoretical activity concerns a **substantive** issue: what as a matter of 'ethical fact' deserves moral considerability?¹⁹ The latter type is **conceptual**: what can be meaningfully said to deserve moral consideration?²⁰ When we inquire about what can have moral standing, and consequently about the range of meaningful applications of an environmental ethic theory, the investigation is not bound to a peculiar theory, however appealing it might appear. Rather it is **disciplinary**: it points to the sorts of beings and concrete situations which a satisfactory theory in that discipline is expected to deal with. The environmental ethicists succeeded in showing that ethical theories cannot afford to be silent on environmental issues. The fact that an ethical theory failed to provide satisfactory accounts could not then be treated simply as a consequence of the fact that the theory itself did not intend to deal with such cases. The argument is that, if genuinely ethical at all, the theory **should** deal with those cases. Environmental issues were proved to be not marginal and optional fields of application of ethical theories. Rather they had to be regarded, to use Th. Kuhn's famous phrase, as **paradigmatic** applications.²¹ Failure to deal in an appropriate manner with them is blame on the theory, and no immunization procedure can help.²²

18 H. Rolston, III, "Environmental Ethics: Values in and Duties to the Natural World", in F. H. Borman, St. R. Kellert (eds.), *The Broken Circle: Ecology, Economics, Ethics*, Yale University Press, New Haven, 1991, p. 74.

19 See K. Goodpaster, "On Being Morally Considerable", in *The Journal of Philosophy*, 1978, pp. 308-25.

20 I discussed these issues at length in my papers "The Conceptual/Normative Distinction in Environmental Ethics", *Revue Roumaine de Philosophie*, 42-43, 1999, pp. 133-145 ; 'Two Approaches to Intrinsic Value', *Revue Roumaine de Philosophie*, 44, 2000, pp. 367-376.

21 Th. Kuhn, *The Structure of Scientific Revolutions*, second ed., Chicago University Press, Chicago, 1970.

22 See also my paper "Global Warming and Moral Theorizing", in *Theoria*, 11 (1996), 27, pp. 61-81.

To conclude, taking into account the attitudes of a philosopher who wants to make sense of the sorts of moral experiences people faced in the past half century in a country like Romania has significant implications. The conceptual issues are in her case settled to a large extent: it is easier and more directly arguable that cases in which some natural items occur, essentially may be regarded as genuinely ethical. Specifically, environmental ethics as a discipline is less problematic.

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The Ethos of Sustainable Development and the Educational System: A Research Report regarding Romania¹

Daniela DUMITRU
Constantin STOENESCU

Introduction

Why focus on ESD? Why is ESD important?

“The world continues to face various critical challenges such as: human-induced climate change, the rapid depletion of natural resources, the frequency of natural disasters, the spread of (old and new) infectious diseases, the loss of biodiversity, the violation of human rights, increased poverty, the dependency of our economic systems on continuous growth in consumerism and so forth. Sustainable development (SD) has become a vehicle around the globe for expressing the need to depart from present dominant models of development which appear unable to balance the needs of people and the planet in the pursuit of peace and prosperity”.²

Entire generations are at least in part shaped in their attitudes, personal and communal aspirations, and in their development goals, by what formal educational systems equipped them with in terms of conceptual toolboxes and mental models. If the current predicament is seen as unbalanced, as not sustainable through forthcoming generations and thus in need of alteration, it cannot be altered using the existing dominant ways of acting and living.³ And those ways of acting and living are, at least partly, a product of the existing formal education. In order to abandon them, educational systems have to be reconceptualised to provide current and future generations with new mental models of living and their role in socio-economic processes.

Among traditional tasks of equipping young people to become successful members of national and global communities, formal education will also have to enable them to live together in a way that contributes to the sustainable development

1 This study was initially written as a research report for the project *Education for sustainable Development* implemented by Network of Education Policy Center, Zagreb, Croatia, with the support of European funds. The authors thank to the team who was responsible for the design of the methodology of the research, namely, Mladen Domazet, Lana Jurko and Kaja Petersen.

2 UNESCO, Section for DESD Coordination. *Review of Contexts and Structures for Education for Sustainable Development 2009*, Paris: UNESCO. p. 6.

3 D. Tillbury, “Learning based change for sustainability: Perspectives and pathways”. In A. E. J. Wals (ed.) *Social learning towards a sustainable world*. Wageningen: Wageningen Academic Publishers, pp. 117-132, 2007.

of their communities. **Education for sustainable development (ESD)** is formal education’s response to global challenges in order to help students understand what sustainable development requires globally and locally, help them understand how to use their own capacity for critical reflection and systemic futures-thinking and motivate them to consider individual actions contributing to communal sustainable development.

Why this study?

UNESCO (2009) reports that the most common global response to the calls for inclusion of ESD into formal education is to make adjustments (either minor or substantial) to the existing educational system, with all its pre-existing strengths and weaknesses. However, all additions to the national formal education curricula struggle with an already crowded curriculum which has a primary task of teaching the basics of reading, writing and arithmetic. ESD content can be seen as “an integrative, cross-curricular theme that can bring together many of the single issues that schools are already expected to address”.⁴

The research sets out to map the content that already exists in the national curricula, the content that is either explicitly aligned with teaching for sustainable development, or is related to it. Based on such mapping it is expected to show how the existing curricular content can be modified (in a minor or substantial manner) to contribute to ESD. Besides curricular mapping the research is looking into the subject curricula and textbooks concerning the same ESD content. Though not as comprehensive as the curricular mapping, this provides a clearer idea of how important goals expressed in the framework curriculum are presented directly to pupils.

It is expected that this mapping will provide the foundation in each of the participating countries for a public debate on inclusion of ESD learning outcomes in the national curricula (and further educational documents based on them) and their importance for future sustainable development. It is expected that it will point out and stress the important role which formal education has in actively shaping a more secure future for the next generation.

Sustainable development and education for sustainable development

The notion of sustainable development

According to the World Commission on Sustainable Development (WCSD) report,⁵ sustainable development marks the ability of “humanity to [...] ensure that it meets the needs of the present without compromising the ability of future generations to meet their own needs”. Thus, the report called for the need to look beyond today’s needs and short-term effects of decisions.

The pursuit of sustainable development was repeated at the Rio Summit

4 UNESCO, 2009, p. 48.

5 Also referred to as the Brundtland Report, “World Commission on Environment and Development; Our Common Future”, Oxford/New York, Oxford University Press 1987.

in 1992 in signing Agenda 21; the commitment was renewed in the Summit on Sustainable Development in Johannesburg in 2002 (Rio+10). In 2012 the Rio process shall celebrate its 20th anniversary, but the definition of SD continues to evolve. The evolution of SD has been marked by attempts to develop a clear notion of it. However, it has been realized that defining SD is actually implementing the SD. Today, sustainability is firmly embedded in the language of development – locally, globally and at every level in between, but according to several authors the popularity of the notion has been accompanied more by verbal adherence than practical implementation.⁶ Moreover, the practice at all levels largely follows the mainstream economic growth agenda. The difficulties of applying the SD derive from the need for fundamental changes in values and perceptions, but also political and administrative structures.

As SD is very much dependant on the social-cultural, political and economic contexts, the interpretation of sustainability changes between contexts and also over time, as new knowledge emerges. Weaver and Rotmans (2006) propose the use ‘sustainability interpretation’ rather than ‘sustainability definition’. In addition to the societal context, the interpretation of SD may depend on other perspectives, such as the extent of trade-offs made between different values (economic, social and environmental).

In conclusion, the concept of sustainable development has created a great challenge for socio-economic development. The concept of weak and strong sustainability has drawn into question the limits of the Earth to cope with the growing demand for resources and the thresholds for harmful impacts. But Rockström et al. (2009) have identified the earth-system processes and associated thresholds which, if crossed, would generate unacceptable environmental change. This group of researchers has presented evidence that three boundaries of earth-system processes (climate change, rate of biodiversity loss, nitrogen cycle) have been overstepped already. The debate over WS and SS is largely about the options for substitutability of natural assets, on the one hand, and the acceptability of this by people and communities on the other hand. Understanding the SD concept assumes looking beyond today’s needs and the short-term effects of decisions; developing this ability has become the focus of ESD.

Education for sustainable development

While the roots of *education for sustainable development (ESD)* can be traced back to the early 1970s ESD was formally tabled at the United Nations Conference on Environment and Development (UNCED) in Rio de Janeiro in 1992. UNCED among other landmark publications, also resulted in “*Agenda 21*” which provides a comprehensive plan of action to be undertaken globally, nationally and locally by UN agencies, governments and major organizations and networks to reduce the human impact on the environment. Agenda 21, the Rio Declaration on Environment and Development and the Statement of Principles for the Sustainable Management of Forests were adopted by 178 Governments. The *Commission on Sustainable Development (CSD)* was created in December 1992 to ensure effective follow-up of

UNCED and to monitor and report on implementation of multilateral environmental agreements.

Chapter 36 of Agenda 21 addresses the need for education, training and public awareness. *UNESCO has been designated as Task Manager for ESD* to address four overarching goals, namely:

- promote and improve the quality of education: the aim is to refocus lifelong education on the acquisition of knowledge, skills and values needed by citizens to improve their quality of life;
- reorient the curricula: from pre-school to university, education must be rethought and reformed to be a vehicle of knowledge, thought patterns and values needed to build a sustainable world;
- raise public awareness of the concept of sustainable development: this will make it possible to develop enlightened, active and responsible citizenship locally, nationally and internationally;
- train the workforce: continuing technical and vocational education of directors and workers, particularly those in trade and industry, will be enriched to enable them to adopt sustainable modes of production and consumption.⁷

Although widespread consensus appears to exist regarding these goals, there is less agreement about the meaning of ESD. Just as is the case with sustainable development, there is not one single correct interpretation and use of ESD. One argument is that ESD should be seen as the total sum of diverse ways to arrive at a ‘learning society’ in which people learn from, and with one another, and collectively become more capable of withstanding setbacks and dealing with sustainability-induced insecurity, complexity and risks. From this point of view, ESD is about – *engaging people in SD issues, developing their capacities to give meaning to SD and to contribute to its development and utilising the diversity represented by all people through education and learning.*

In order to bring ESD to the attention of governments and the public, the United Nations has declared a *Decade of Education for Sustainable Development (DESD)*. Resolution 57/254 on the DESD (2005-2014) was adopted by the United Nations General Assembly in December 2002, shortly after the World Summit on Sustainable Development (Rio plus 10) which was held in Johannesburg in August/September of the same year. The basic vision of the decade is of a world in which everyone has the opportunity to benefit from education and learn the values, behaviours and lifestyles required for a sustainable future and for positive societal transformation. DESD seeks to promote the meaningful development and implementation of ESD on all geographical scales (locally, nationally, regionally and internationally) with the involvement of a wide range of stakeholders. At the start of the decade, this vision was translated into four objectives: 1) facilitate networking, linkages, exchange and interaction among stakeholders in ESD; 2) foster an increased quality of teaching and learning in ESD; 3) help countries progress towards and attain the Millennium

⁶ Gibson et al. 2005.

⁷ http://www.un.org/esa/dsd/agenda21/res_agenda21_36.shtml.

Development Goals; and 4) provide countries with new opportunities to incorporate ESD into education reform efforts.

The current project addresses all the four goals of DESD, and specifically the goal of networking, linkages and learning among education centres in Europe in ESD, fostering the increased quality of teaching and learning in ESD and sharing experiences and knowledge of teaching ESD.

Sustainable development in national curricula

Daniela Tillbury (2007: 119), Director of International Research Institute in Sustainability (IRIS), suggests that sustainability is about challenging our mental models, policies and practices and not just about accommodating new dimensions into current work or finding common ground between related existing programmes. She holds that learning-based change for sustainability challenges educators to think beyond raising awareness and go beyond involving learners merely in one-off activities such as cleaning up or planting trees. Though these are useful and beneficial activities, what is essential is to encourage learners to develop critical and systemic thinking skills that enable them to get to the core of the issues. This reflects the major shift in thinking from **environmental education (EE)** to **education for sustainability** or ESD.⁸

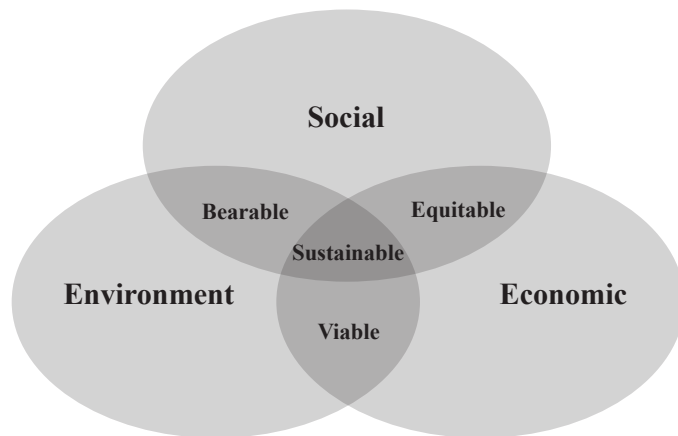


Figure 1: Three basic elements of sustainability: environmental, social and economic (Source: Wikipedia)

In terms of curricula content, EE can be a whole or part of ESD, or can have significant overlaps with ESD, but EE is insufficient to replace ESD as it lacks the socio-cultural and economic dimensions (see Methodology, next chapter). Conceptually, ESD also contains important pedagogical elements that are somewhat harder to capture with our current research, and which includes social learning, participation

and capacity-building. On top of these, some countries are moving away from the anthropocentric (or human-centred) perspective towards eco-centric interpretations of sustainable development through references to living in harmony with nature and the rights of other species and the non-human world. It is clear from the above that ESD is not just a matter of information, but is setting the ground for a gradual learning-based change. This comes from the perspective that the dominant current models of development appear unable to balance the needs of people and the planet in the pursuit of peace and prosperity. SD is mainly portrayed through three dimensions and their interrelation in time (past-present-future) and in space (near-far).

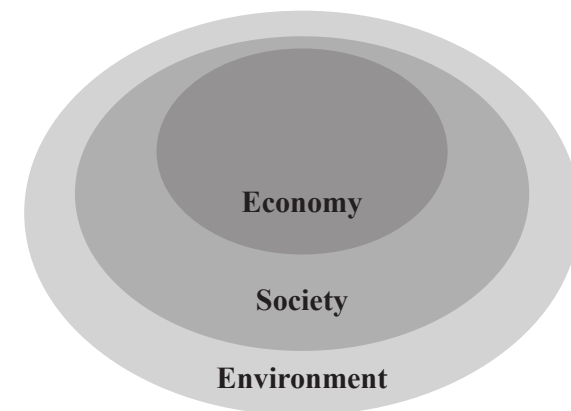


Figure 2: sustainability representation showing how environment and society limit economics (Source: Wikipedia)

Sustainable social development (people) is aimed at the development of people and their social organization, in which the realization of social cohesion, equity, justice and wellbeing plays an important role.

A sustainable environmental development (planetary boundaries) refers to the development of natural ecosystems in ways that maintain the carrying capacity of the Earth and respect for the non-human world.

Sustainable socio-economic development (prosperity) focuses on the development of the socio-economic infrastructure, in which efficient management of natural and human resources is important. It finds balanced ways to integrate these dimensions in everyday living and working and poses, perhaps, the greatest challenge of our time as this requires alternative ways of thinking, valuing and acting.

In brief, in the SD context it is important to consider environmental and socio-economic development in cross generational (i.e. intergenerational) perspective.

⁸ Tillbury, *op. cit.*: 120.

According to UNESCO (2009)⁹, ESD would be focused on development of knowledge, capacities, qualities or competences required for active, critical and meaningful contribution to sustainable development, and on the transfer of appropriate sets of knowledge, attitudes, values and behaviour. The report states:

ESD must be seen as a comprehensive package for quality education and learning within which key issues such as poverty reduction, sustainable livelihoods, climate change, gender equality, corporate social responsibility and protection of indigenous cultures, to name a few, are found”.

ESD supports five fundamental types of learning to provide quality education and foster sustainable human development – learning to know, learning to be, learning to live together, learning to do and learning to transform oneself and society.

ESD is a learning process (or approach to teaching) based on the ideals and principles that underlie sustainability and is concerned with all levels and types of education.

However, ESD still remains debatable around the world. It is now understood that more room will be left for localization and contextualization, and national and regional debates towards the development of ESD’s meaning are seen as crucial. Furthermore, the current study aims at identifying the cognitive, and the skills and values elements of sustainable development in the national curricula in eight European countries.

ESD in *Romania*

In Romania there were several attempts to reform the educational system, including the national curriculum and the school programmes. None of these reforms were consistently led to completion since the time to complete such a project was longer than the various ministers’ mandate. Eventually, a modification of the national curriculum was adopted during Andrei Marga’s mandate, the reference framework adopted then replaced the old one, and is still used nowadays; it is, of course, the one we used for this study. Sustainable development education was not considered until now a strategic objective of the educational reform. Although, after the fall of the communist regime in 1989, each government and each minister of education affirmed that an educational reform was needed, sustainable development education was not explicitly considered a necessity and a priority action. Sustainable development education was not defined as a component of the curricular reform, and in the public debate, including the one that attended the new education law, the topic was almost absent, crowded out by other issues and topics considered to be national priorities. Unfortunately, neither the general public nor the educational experts nor the environmentalists, engaged in any systematic and concerted action to promote

sustainable development education as a topic of public interest. Nor were the media involved in any initiative, or awareness campaign on the topic.

We would say, however, that some sustainable development education aspects were considered by educational and environmentalist non-governmental organizations. These organizations developed practical activities for young students with specific sustainable development education content. Hand in hand with schools, the non-governmental organizations (NGOs) also developed alternate non-formal education activities, most of them oriented to implementing different objectives in sustainable development education. These activities were financed before Romania joined the European Union, through the PHARE program, to which we add the Civil Society Development Foundation and Open Society Foundation – with focused attention on NGOs. Specifically, the Youth Ministry, in its various institutional forms, financed or managed through different agencies the European funds for Youth NGOs most of which had sustainable development education as a goal. This way, we can say that the educational system, centralized and top-heavy, reacted with delay to internalize the specific values and objectives of sustainable development education, while the much more dynamic civic society became an alternative provider and in doing so, partially addressed the system’s deficiencies.

The educational system in Romania was never evaluated from the perspective of specific sustainable development education in order to activate strategic operational objectives, and a public debate on this topic was never initiated. No education minister or his representatives ever explicitly mentioned the necessity of including in the reform process some elements of sustainable development. Nor did any institutions or organizations involved in the educational field, including those in educational research, start any curricular reform projects. Unfortunately, neither cultural publications nor the intellectuals have a significant share of the public debate on sustainable development topics, a fact which is surprising as in other European countries such debates are important, and Romanian society is known for its interest in keeping up with what is fashionable.

Therefore, sustainable development education has a peripheral place in the national curriculum, its components being mentioned only fragmentarily in scientific subjects such as Biology and Geography. Hence, no cross-curricular subjects were identified and there were no initiatives to sustain the presence of sustainable development education in the national curriculum. The educational system’s condition can be considered precarious and we can diagnose a severe historical delay regarding the assimilation of sustainable development education values. Although in some lessons, topics with good educational opportunities are being taught, the intellectual approach being promoted and the preferred type of debate are still in conflict with sustainable development values.

Nowadays, the pre-university system in Romania is organized on three levels of four years each: primary education, secondary education or gymnasium, and high school. It is mandatory to complete ten years of education. Once the new education law is observed, the ninth grade will be considered secondary school, so the three levels will have new dimensions: four-five-three years. The first two levels are the same for everyone, and, as we mentioned previously, a national curriculum is being adopted. Still, this curriculum offers the school the possibility to choose

⁹ DESD Monitoring and Evaluation document.

certain subjects, accordingly to the school profile, from mathematics or sciences to social-cultural disciplines. This approach does not leave space for trans-discipline or multidisciplinary topics. At the high school level specialization occurs, meaning that the graduates can choose various profiles, from theoretical (or academic) high schools to technological, economic or vocational high schools. Inside each of these profiles several other specializations can be chosen, for example, in theoretical high schools, you can choose from mathematics, physics, biology and chemistry, or social sciences.

Methodology

The aim of the research was to collect and analyse the existing content most directly relevant to sustainable development in the national curricula of the participating countries. The research methodology was designed by the Central Research Team (CRT) of the project to be as straightforward and efficient as possible for the country teams to gather as well as to analyse such complex data, and to aid the CRT in comparative analyses of the findings. The method involved three separate phases (A, B and C) that aimed to restrain and circumscribe the scope of research from the most abstract educational documents (framework curriculum) to the “grass roots”, to what exactly is delivered to the children in the classroom (the textbooks).

All three phases used the ESD content list (annex 1) categorization as well as specially designed matrixes for each phase.

ESD Content list - there are two major groups of SD content elements that make up the content list: *cognitive content* and *skills and values*. The cognitive content was organized in three categories: social-cultural elements (human rights, peace and human security, gender equality, etc.), environmental elements (natural resources, water, soil, air, energy, etc and economic elements (poverty, planetary boundaries, market economy, corporate and social responsibility and accountability, etc.). The skills and values group contains items such as acting with responsibility locally and globally, acting with respect to others, critical reflective thinking, applying learning in a variety of life-wide contents, and so on.

All elements of the content lists had codes assigned and descriptions that added coherence and unity to the analysis process in all participating countries, while at the same time permitting a quantitative approach along with the qualitative one.

Categories - the research also used for analyses *five categories*: Environment affects Humanity (EH), Humanity affects Environment (HE), Individuals affect Environment (IE), Sustainable Development Values (V) and Other (O). The five categories aim to show if the curricula have an orientation or a vision.

Phase A of the research aims to scan the framework curriculum to reveal the SD content and its distribution in six curricular areas, by going through the document(s) and recording in the matrix all occurrences of ESD content according to the content list as well as categorizing it according to the categories.

The given curricular areas were reorganized (for coherence across countries) as

follows:

- Area A – natural sciences, physical environment and technology
- Area B – social sciences, socio-economic development, history and economics
- Area C – values and ethics education, citizenship education, religious education and philosophy
- Area D – arts, humanities and languages (communication)
- Area E – mathematics
- Area F – physical and health education

Phase B of the research analysed the subject curricula. In order to focus the research, the two most loaded curricular areas based on phase A were selected: one according to cognitive content and one according to skills and values content. Once the curriculum areas were selected country researchers in consultation with CRT selected subjects again by the criterion of SD loading at certain grade levels (max. six subjects), for deeper analyses.

For phase B of the research the following subjects were selected:

- Environment, 1st -3rd grade
- Natural Sciences, 3rd-4th grade
- History, 4th-8th grade
- Geography, 4th-8th grade
- Biology, 5th-8th grade
- Physics, 6th-8th grade
- Chemistry, 7th-8th grade

The steps from phase A were then repeated on the selected subject curricula while the SD content from the content list was recorded into predesigned matrixes and categorized according to categories.

Phase C of the research analysed textbooks and was conducted in two steps. Step 1 of this phase aimed to select the three textbooks whose content was analysed. This was based on phase B of the research and included the following criteria:

1. The most content loaded subject + grade combination. This was based on the highest number of content elements and skills and values elements.
2. The most ‘IE only’ loaded subject + grade combination. This was based on the highest number of category IE (individuals affect environment).
3. The most ‘IE alone or with other categories combination’ loaded subject + grade combination. This was based on the highest number of IE (individuals affect environment) in combination with other category.

The rationale behind this selection procedure was to increase the focus on framing the content, as denoted by the categories. The primary drive behind the selection of textbooks was not to perform an evaluation of such a limited sample, but to provide

internationally comparable examples of good practice in interweaving different aspects of ESD into a coherent narrative delivered to students. Also, the relationship between the curricular proscriptions (indicated both in the framework curricula and the specific subject curricula) and the content, tasks and illustrations directly presented to students was to be mapped.

A detailed analysis of the contents confirmed the working hypotheses which were developed based on an initial curricular analysis. For the selected subjects, the most significant number of elements with environmental cognitive content is found in Geography and Environment, subjects that assume values specific for sustainable development. The various natural sciences such as Physics, Biology and Chemistry, in addition to their specific contents, have a formative role, hence, the hypothesis that these subjects develop competencies that encourage ESD.

As a consequence, for phase C of the research the following textbooks were selected:

- Natural Sciences, 4th grade
- Geography, 5th grade
- Physics, 8th grade

The second step of phase C had a matrix which asked the researcher to analyse content, illustrations and tasks from each textbook selected.

Research limitations. We must draw attention to some limitations of the present research, which are inherent to empirical social studies. This is an international initiative, deployed in eight countries with different linguistic, cultural, historical and social contexts. Each country had a team formed by an educational partner and an environmental partner. A certain amount of subjectivity in analysing the curriculum is present, due to so many researchers being involved. The CRT anticipated this and it is the reason for introducing codes. However it is not possible to ensure that all coding is totally uniform and standardized. The CRT tried to keep subjectivity at a minimum by describing accurately all SD elements and discussing in depth with country teams every aspect of the tasks.

National specifics

The framework document on which our research is based is the National Curriculum for Mandatory Education – reference framework, approved by the Ministry of Education and National Council for Curriculum in 1998. The document was developed by a group of researchers of the Educational Sciences Institute, coordinated by Alexandru Crisan.

Considered by the former minister of education, Andrei Marga, as an essential component of a systematic and comprehensive reform, the document defines the main benchmarks of the educational policy and strategy. The document has the following structure:

- Presenting the fundamental options of the educational policy in the

curriculum field

- Defining key concepts and the national curriculum components
- Specifying the principles and establishing the selection criteria
- Determining the purposes of the educational levels and the objectives of the curricular cycles
- Describing the training profile of mandatory education
- Presenting the dominants of the curricular areas and school subjects
- Presenting the school programme structure
- Specifying the structure of curricular performance indicators
- Defining benchmarks to elaborate the curriculum decided by the school

The framework document is too general to set specific educational objectives such as sustainable development education. In fact, as we will demonstrate, the main aim of this document, defined as a component of the reform, is shifting the content and teacher-focused orientation to a competency and student-focused form of education. Unfortunately, the document minimizes the issue of defining values that underpin the educational process and becomes obsessed with promoting the importance of developing skills and competencies.

In phase B of our research we used the school programmes of the selected subjects, as follows:

- o **Environment**, 1st and 2nd grade, school programme approved through Ministry of Education Order no. 4686/5.08.2003
- o **Natural Sciences**, 3rd grade, school programme approved through Ministry of Education Order no. 5198/1.11.2004
- o **Natural Sciences, History, Geography**, 4th grade, school programmes approved through Ministry of Education Order no. 3919/20.04.2005
- o **History, Geography, Biology**, 5th-8th grade, **Physics**, 6th-8th grade, **Chemistry**, 7th-8th grade, programmes published in 2009

All of these programmes show an effort to adapt to the **National Curriculum for Mandatory Education**, but without any innovative dimension. The new programmes, compared to the old ones, search for a balance between contents and competencies, but most of the time without any didactic innovation regarding the connection of the two components.

In phase C of our research, we selected the **Natural Sciences** 4th grade handbook, the **Geography** 5th grade handbook and the **Physics** 8th grade handbook. The last published editions of these handbooks were used. The handbooks are the best evidence for the pace of educational reform, meaning that if in the programmes we can still find the reformist spirit of the national curriculum, in these handbooks we are the witnesses of an even bigger dissipation of the initial reformist intentions. The handbooks are still oriented to the past, proving that the old reflexes are stronger than the reformist intentions. Secondary level handbooks especially are still overloaded and heavy, and probably act as an obstacle for students and teachers. Still, compared to the older handbooks versus the sustainable development education requirements, they are a few steps further evolved, but not enough to ensure a

decisive change in the educational system, mainly because of the way in which classroom lessons are conducted.

The present report is the written analysis of all three phases, as they are in our country.

Introduction to analyses

The path towards ESD as a path towards a durable future

The current predicament is, at least in part, fraught with problems which cannot be resolved using the existing dominant ways of acting and living; they require a step out of the standard conceptualisation of our material, living and social environments and their role in socio-economic processes.¹⁰

Though this is a broader socio-cultural task than any formal curriculum can hope to encompass, on the conceptual level it requires questioning the existing mental models, mostly successfully reproduced through formal education, which have consigned most contemporary societies to the path of unsustainable development. Alongside inquisitive reconsideration of how we act, this also includes a better understanding of the social expectations and prejudices that influence individual action. The required change is demanding and painful, much deeper than a curricular intervention, but necessarily based on educational processes and learning that is all-inclusive, well-directed and carefully planned. Though the perceived threat is great, every community should avoid addressing it through hasty, externally imposed responses that are not based on planned and all-encompassing learning and understanding. For this we need to reconstruct education into ESD; this means more than the reduction of ignorance and adoption of inert facts – it involves the development of motivation to act based on stimuli from the immediate environment and independent formulation of one's own interests and attitudes.

One of the current and future tasks of education is to enable people to live together in ways that contribute to sustainable development of their communities and states. But at present education often contributes to unsustainable living because of the lack of opportunity for learners to question their own lifestyles and the systems that promote those lifestyles, and because it advocates reproduction of unsustainable models and practices. A reorientation of formal educational content towards sustainable development is thus recommended. More concretely, that includes helping students understand what sustainable development requires globally and locally; it also involves helping them understand how to use their own capacity for critical reflection and systemic and futures-thinking, as well as helping to motivate them to consider actions that facilitate sustainable development.

ESD and the national curriculum

The most common global response to the calls for inclusion of ESD into formal education is to make adjustments (minor or substantial) to the existing educational system, with all its frailties and idiosyncrasies. This is achieved either as an expansion of the existing inclusion of EE topics (thus their importance in our

methodology and the results); or as adoption of altogether new cross-curricular and interdisciplinary teaching and learning (much less represented). It is especially interesting that at the global level¹¹ few countries report supporting ESD in early childhood education, which is something we have investigated in greater detail from both the side of skills and values development and the cognitive content introduced through analysis of curricula from the beginning of compulsory schooling. It is often the case that ESD themes are *seen* as too complex and suitable only for later stages of education, rather than being seen as mostly a matter of presentation in the existing curricular content. But in our country (as is the case with most countries in the region), in later stages of education diversification, and in some cases strong vocational orientation, sets in. As it is a global trend¹² to increase integration of forms of ESD into vocational education, we note the avenues for continuing the present research in our country.

All additions to the national framework curricula, such as sustainable development topics, need to be added to an already crowded curriculum, which in the case of formal compulsory education has the explicit task of teaching the basics of reading, writing and arithmetic. We therefore started our analyses with mapping of what content already exists in the national curricula (both framework and subject curricula) that either explicitly conforms to teaching sustainable development, or is related to it. In the case of the latter, **we shall endeavour to show how the existing content can be slightly modified to contribute to education for sustainable development (ESD)** without introducing additional content to the curriculum. It is therefore of utmost importance for us that the sustainable development content can be seen as “an integrative, cross-curricular theme that can bring together many of the single issues that schools are already expected to address”.¹³

As is expected from the 2009 *Review of Contexts and Structures for ESD*¹⁴ most of the ESD content was found in those curricular segments where EE content can traditionally be found, namely, in natural sciences (including geography). It was in this segment of the national framework curriculum that most content was identified in all the participating countries. It was especially interesting for us to determine the extent to which the generally-applicable learning goals (part of our skills and values content elements – SV), such as acting with respect for others, acting with responsibility globally and locally, critical thinking, understanding complexity, futures-thinking, understanding interdisciplinary relations and the ability to identify and clarify values are represented across the national framework and selected subject curricula. Some of these learning outcomes can be seen as instrumental (for example, acting with responsibility, futures-thinking or understanding interdisciplinary relations), while others are more emancipatory (e.g. critical and reflexive thinking, participating in consensus building and democratic decision-making, or decision-making in uncertain situations). As the *Review of Contexts and Structures for ESD* notes, these differences may reflect the historical and political context of

¹¹ UNESCO, 2009, p. 48.

¹² Ibid.

¹³ Ibid.

¹⁴ Ibid.

¹⁰ Tillbury, *op. cit.*

individual countries, but through explicitly presenting ESD's role and position in the curriculum we hope to open a public debate about its importance for sustainable development.

What we teach and how we teach it

In that light, and building on the methodological and historical foundation of ESD in EE, we also sought to map how curricular content presents the interaction between individuals, humanity and their bio-physical environment; we thus report on the overall findings of this type of framing in the curricular content. We have sought to map whether the segments of the curriculum state that some aspect of a natural system affects people, or whether humanity is dependent on some aspect of the Earth or environment; we have also looked at depictions of how the actions or decisions of society influence or change the Earth and environment, for better or worse and whether the actions or decisions of individuals, in their private capacity, influence or change the Earth and environment, for better or worse.¹⁵ The latter is especially important for its emancipatory aspect in combination with development of certain skills and values. We have sought to map and report on the content from selected textbooks with respect to how they reflect and represent these curricular recommendations. With regards to overall national and selected subject curricula, our analysis will show the prevalence of different framings of perceived interaction between individuals, communities and the environment.

Following the *Review of Contexts and Structures* analysis and recommendations we sought to map both the environmental as well as the developmental, disaster prevention, corporate and social responsibility ESD content themes. As is the general global trend, it is most often the case that the traditional environmental elements (natural resource management, health, water and importance of biodiversity) are more represented than the social, cultural and economic aspects of development. It is also a global trend that the countries from wealthier regions are less preoccupied with addressing the socio-cultural aspects of SD in their curricula than is the case with countries from poorer regions. In the latter case on a global level, topics such as peace, citizenship, ethics, equality, poverty and cultural diversity are emphasised more strongly relative to others. It is important for the presentation of our national results to note that, globally, two SD focal areas emerge (a) a focus on understanding the causes and impacts of key issues and their mutual interconnections, and (b) a focus on capacity development for addressing the key issues at the individual, communal and global level.¹⁶

Our analysis tries to shed some light on these two aspects in our country by looking in greater detail into both the subjects that were expected to contain the most cognitive, environmental, economic and socio-cultural content (CC) and those subjects that were expected to contain the most 'skills and values' content (SV). Each will be presented in greater detail below. It is important to note that our entire approach focuses on the more conventional presentation of the ESD content,

through integration of the ESD and SD issues in the existing school subjects, rather than through innovative methods such as 'adopting a whole school' approach to ESD. Though the latter is important, in our country it does not have the potential to reach as wide a number of students as the former, and thus it remains an open topic for further analyses and project development. Moreover, interventions in the formal national curriculum lead to more urgent and readily adoptable responses among policy-makers, which is one of the important first steps towards orienting educational practice in the direction of a sustainable way of life.

Overview of country findings (both cognitive, SV contact and categories)

The comparative research of the six curricular areas must take into consideration the debate that took place in Romania during the last decade of the last century, concerning the contents of a profound reform of the educational system. In this case, the decision to reorient the teaching process from teacher to student has direct effects on the relationship among cognitive content, competencies and values. The general opinion, not only in educational experts' views, was that the educational system during the communist period was centred on the teacher and on transmitting knowledge. Also, the general opinion stated that the school programme and the associated manuals had too much information, so the urgent need was to refocus the educational system on the student and create competencies. A sign of equilibrium appeared but from the beginning there was an obvious shaping of some formal reflexes. Unfortunately, ESD was not one of the reform's objectives, but the school classes that traditionally discussed specific topics such as the environment, continued to do so.

Curricular Area A, *Natural sciences, physical environment and technology*, is a good example of focusing on creating competencies on a curricular level. **Natural sciences**, for primary education and **Physics, Chemistry and Biology** for secondary education, are designed according to their formative potential. The *core* of the competencies assumed by these subjects is defined by what can be included in the more general category of experiential learning, using observation as a research method and making inferences based on those observations. Furthermore, it proposes interdisciplinary correlations and contextual approaches. From the perspective of ESD, Subject Area A provides maximum competencies, but, with few exceptions, does so without mentioning cognitive contents and values specific to durability.

Curricular Area B, *Social Sciences, socio-economic development, history and economics*, can be seen, in contrast to the Subject Area A, as a counterbalancing element. With subjects such as **History** and **Geography**, Area B offers most of the values and cognitive contents, but a minimum of competencies. **History** excels in offering socio-cultural cognitive content, from human rights issues to forms of government. **Geography** offers all of the elements regarding the environment, from natural resources, air, water and soil to issues concerning pollution and waste. Moreover, parts of population and settlement geography include detailed cognitive elements about rural development and urbanization, but also cover social aspects such as cultural diversity. Ultimately, **Economy**, as a subject taught only in high school, provides specific content, but without an approach that includes, on a sup-positional level, implicitly, an option for sustainable development values.

15 K.A. Kastens and M. Turin, "To What Extent Should Human/Environment Interactions be included in Science Education?", *Journal of Geoscience Education*, v.54. n.3. 2006.

16 UNESCO, 2009.

Curricular Area C, *Values and ethics education, citizenship education, religious education and philosophy*, presents socio-cultural elements, explicitly focused on diversity and tolerance values rather than the broad spectrum of sustainable development. Curricular Area D, *Arts, humanities and languages*, offers communication competencies and elements of procedural learning through solving problems. Curricular Area E, *Mathematics*, develops specific competencies, this time concerning numeracy. Finally, Curricular Area F, *Physical and health education*, is restricted to minimal specific contents and competencies.

As a result of these observations on curricular areas in the national curriculum, phase B of the research selected the following subjects:

- Environment, 1st-3rd grade
- Natural Sciences, 3rd-4th grade
- History, 4th-8th grade
- Geography, 4th-8th grade
- Biology, 5th-8th grade
- Physics, 6th-8th grade
- Chemistry, 7th-8th grade

A detailed analysis of the contents confirmed the working hypotheses which were developed from an initial curricular analysis. For the selected subjects, the most significant number of elements with environmental cognitive content is found in Geography and Environment, subjects that assume values specific for sustainable development. The various natural sciences such as Physics, Biology and Chemistry, in addition to their specific contents, have a formative role, hence, the hypothesis that these subjects can develop competencies that encourage ESD.

As a consequence, for phase C of the research the handbooks for the following subjects were selected:

- Natural Sciences, 4th grade
- Geography, 5th grade
- Physics, 8th grade

The 4th Natural Sciences handbook is based on interactive and participative teaching methods, which makes them dependent on the teacher's capacity and pedagogical ability to offer the contents. The 5th grade Geography handbook is designed in a traditional manner, almost unchanged compared to any similar handbooks from the last decades. It offers considerable information, (perhaps too much), and it is hard to believe that a student will retain everything. So although we find a number of cognitive elements regarding the environment, the quantity overwhelms the learning capacity of the student. Lastly, the Physics handbook, also replete with cognitive elements regarding physical phenomenon, is focused at the same time on developing competencies, especially those based on experiential learning. Moreover, when topics connected to the environment such as radiation and nuclear reactors are covered, the implications for the environment are analysed. Generally, this handbook leaves the impression that there has been an effort to

modernize.

The illustrations found in the 4th grade Natural Sciences handbook are entirely age specific drawings, which facilitates a very good understanding by the students. In the 5th grade Geography handbook, photos and graphic schemes prevail, respecting the rule according to which a referential that can be represented non-propositionally, usually thorough an image, is allocated to a term. The Physics handbook particularly, is based on graphic schemes, but it also uses photography when possible. Generally, we find adequate terms, without errors or other formal or material mistakes between the content and the images used. The illustrations also take into consideration the students' intuitive capacity, usually conceived as support documents for various explanatory or evaluative propositional content.

The topics from the Natural Sciences handbook combine routine procedures with process learning, where quite a number of cases in which the child's imagination and creativity are called for. The Geography handbook, one of the old school materials, is still counting on memorizing data and is dominated by topics that require such an effort. Finally, the topics from the Physics handbook are actually questions and thematic exercises where the authors' efforts to ensure coverage of topics that develop competencies such as inferential capacity, can be noticed.

The analysis of the SD cognitive content

Research on the curricular areas focused on contents specific to sustainable development leads to the conclusion that ESD is not a priority at the design stage; when these specific contents emerge it is as a consequence of the content characteristics of various subjects.

A generous assessment of the situation allows us to identify specific elements of sustainable development education. In Curricular Area A, *Natural sciences, physical environment and technology*, we identify the **practical skill domain**, whose content should be adaptable to local resources; this would require knowing the local resources as elements of the environment, corresponding to the B1 element but also to the **Technological Education domain** for which there is a requirement to stimulate the entrepreneurial initiative. The latter corresponds to the economic character content elements such as the economic market and the relation between production and consumption, and thus to elements C4 and C5.

In Curricular Area B, *Social Sciences, socio-economic development, history and economics*, the main providers of cognitive contents specific to sustainable development are **History** and **Geography**. The first is being asked to offer 'complete' knowledge that covers all of history's domains, the cultural, the social and the political convey information that contains content specific to A1-4 and C1-2 and C4. The second remains the main provider of cognitive elements related to the environment, and is focused on developing understanding and capacities for facts and processes specific to the geographical environment; this emphasises developing investigative and research skills, and thus addresses the full range of elements B1-14.

Curricular Area C, *Values and ethics education, citizenship education, religious education and philosophy*, also has a minimal offering in **Civic Education**. Elements related to human rights and cultural diversity are identified according to elements A1 and A4, with the curricular objective being to encourage group

interaction for responsible participation in society. Also, **Religion** could be, under certain conditions a provider of cultural elements regarding understanding cultural diversity. The same element, A4, is at stake in Curricular Area D, *Arts, humanities and languages*, since **Plastic and Musical Education** is based on the ability to distinguish cultural diversity and requires free expression of personality. Curricular Area E, *Mathematics*, does not include any cognitive elements specific to ESD and in Curricular Area F, *Physical and health education* the school programme is adapted to specific existing materials that conform to local traditions; this again allows understanding of cultural diversity, according to A4's description.

Environmental aspect vs. other aspects of SD representation in the curriculum

The contents specific to ESD can be found in the national curriculum, in programmes of different subjects and in handbooks, depending on the cognitive content of the subject. Therefore, in Geography we can identify mainly cognitive elements from the category of the environment, in History, socio-cultural elements, and in Economy, economic elements. The national curriculum does not explicitly stipulate specific objectives for sustainable development, although the necessity to protect the environment was assimilated as an educational objective. This open mindedness towards environmental issues has determined an increasing share of the topics that approach the subject. Therefore, even science subjects such as Physics bring into question aspects of the impact that humans have on the environment, such as, for example, the effects of nuclear energy.

The national curriculum is mainly oriented to specifying competencies that every researched curricular area should develop, therefore an assay of the presence of elements with environmentally-specific cognitive content can be made only at the school programme level for different subjects, which is exactly what we did in phase B of our research in which school programmes for subjects in curricular areas A and B were analysed. In Area A, primary education subjects were selected:

- **Environment**, which is studied in the first two grades
- **Natural sciences**, studied in the 3rd and 4th grade.

For gymnasium, **Biology**, **Physics** and **Chemistry** were selected. In Area B, **Geography** and **History** were analysed.

In Curricular Area A, primary education subjects **Environment** and **Natural Sciences** are based, according to the programme, on active learning methods connected to environmental observation. Generally, students are asked to describe various situations in real life that help them understand processes and phenomena in the environment. This way, students learn to describe and use theoretical ideas about natural resources, water, air, soil, but also learn the consequences of human activity on environment and on life, with humans being a living part of the system.

Biology contains numerous cognitive environmental elements from the 5th grade onwards; the 8th grade handbook is very rich in this kind of content. The 5th grade programme has as its objective: knowing the living world or more specifically, the vegetal world and its impact on the environment and human life. For the 6th grade, when the animal world is studied, content objectives are set such as analysing

the environment, the diversity of the animal world “establishing connections between environmental factors and animal diversity” and also “problem solving in the relationship between man and the animal kingdom”. In the 7th grade, when anatomy and the human physiology are studied, cognitive content B 13 is targeted in order to “establish connections between the system of organs in the human body and the influence of the environment”. The 8th grade programme gives the highest rating to elements with environmental cognitive content, among which we can mention identification of the components of an ecosystem, comparison of different natural or anthropogenic ecosystems, damage of the environment through pollution and overexploitation, inserting new species in the ecosystems, protecting and conserving the environment or collecting waste, and also natural parks and reservations. Balances and imbalances in ecosystems is also a topic.

For the 8th grade, in **Chemistry**, there are two objectives that lead to incorporating certain environmental cognitive contents, the first implicit and the second explicit. The first objective consists in “assessing the advantages and the disadvantages of chemical substances” and the second one in “identifying the agents that pollute water, soil, air and ways to prevent and reduce pollution”. When it comes to **Physics**, there is a similar objective for the 7th and the 8th grade, which is to “argue advantages and disadvantages of new and future technologies for the environment”. A detailed analysis on an 8th grade **Physics** handbook showed that following the field-specific topics, there are topics about the impact of technology on the environment accordingly to B 12 and B13 content elements – pollution and waste in distinctive lessons. The two topics are called “Irradiation, biologic effects and radioprotection” and “Nuclear energy and nuclear accidents”.

In Curricular Area B, programmes for **History** and **Geography** were analysed. The programme for **History** does not have as an objective transmitting knowledge about the environment, except in some cases where historical events are related to the geographical environment and other environmental factors such as the climate. The environment is also mentioned when the topic is about various natural disasters that have marked the history of some communities. Not least, the historical presentation of the rural and urban development process considers not only environmental dependence but also its influence. The programme with the heaviest cognitive environmental content, along with the **Biology** programme, is the **Geography** programme. Technically, in four years of secondary school all of the fourteen elements included in the research instrument are covered. The study topics are assigned to one element, for example water or soil, and offer specific geographical data, from general information regarding continental geography to specific details of Romania's geography. Considerable information is provided, a fact that requires negotiation among the stakeholders since the objective is to improve the existing handbooks and space is at a premium.

Framing of environmental aspects (IE/EI/HE)

In the selected programmes, different frameworks of analysis were used, depending on the context and according to the research categories distinguished, from those that concern the way that the environment influences humanity to those concerning

the way humanity influences the environment.

Generally, the Geography programme is based on a very useful ambivalence supported both by the idea that the environment influences the development of humankind and that humankind, especially through industrial activity, modifies and affects the environment. The topic of anthropogenic influences is approached in various contexts, according to the age of the student. From a detailed analysis of the 5th grade Geography handbook we can observe a rule according to which, whenever such a step is possible, some human activities can have a negative influence on the environment through pollution. For example, in the chapter about atmosphere there is a lesson about the climate and air pollution. A paragraph called "Pollution and climate changes" proposes the next fragment: "If carbon dioxide in the atmosphere overcomes the 0.03% limit, the medium global annual temperature will increase. The consequences are catastrophic. The level of the planetary ocean will increase because of the melting ice caps. The oceans will invade the continents. The desert areas will broaden" (p. 71).

For History topics as well, it is assumed that historical development happened in connection to the environment, and the fact that rural and urban development left a human mark on the environment.

The other natural science handbooks explicitly treat aspects of technology's effects on the environment as well. For example, the 8th grade **Physics** handbook, lesson 8.3, approaches "Radioprotection and biological effects", by indicating the effects of natural or artificial radiation on the environment or on individuals. Here is a fragment that illustrates the IE case, where a radioactive environment affects the individual: "As a consequence of the interaction between radiation and living organisms, physical phenomenon emerge (stimulation, ionization) that determine chemical phenomenon (alteration of macromolecules and enzymatic systems) [...] biochemical and morphological injuries may occur" (p. 148). But by analysing the consequences, an EH type situation is underlined: "Maintaining a permanent level of irradiation, even at a low level, that produces a minimum of mutations in a generation can lead to real ecological disasters in the next generations of the ecosystem" (p. 148). A lesson dedicated to nuclear energy conveyed references to nuclear accidents and to the issue of waste storage, indicating that in this context there were expected risks of nuclear energy and associated effects on the environment. The text in the handbook says: "[...] technically, no nuclear reactor can explode like a bomb. Although there are possible accidents where the reactor can overheat and their components, depending on what materials are used to build them, melt or burn. The increased pressure of the cooling agent can become the cause of mechanical explosions that would deteriorate the reactor's case or the cooling system. This way, radioactive materials can contaminate the environment". (p. 161). Accidents from Three Mile Island or Chernobyl are mentioned, where "the human factor was the cause, but because of the different protection systems the consequences were different" (p. 161). Also the waste disposal issue is concisely described: "A special issue in the nuclear field is the nuclear waste disposal. The nuclear reactors produce nuclear waste. These can infect the atmospheric air, the ground waters, the plants etc.; nuclear waste is deposited in special containers in special areas. Frequently, these areas are underground, in old mines. In 1967, in a

storage place in the Ural Mountains, Russia, the nuclear waste mysteriously caught fire and exploded. Dozens of people died". (p. 161).

Representation of economic aspects in the curriculum

In the national curriculum for secondary school there are very few elements with economic content. These types of elements are programmed to be studied in high school, mainly in Economy and other connected subjects such as Applied Economy or Entrepreneurial Education, subjects that lately have been preferred to other social sciences, perhaps unduly, and with unfavourable consequences on the intellectual development process of the students. So with these changes, the share of economic curricula elements increased and the socio-cultural elements were reduced.

In the current national curriculum for secondary school there are two cases where we can identify favourable contexts for transmitting economical cognitive contents. Therefore, in curricular area A, the subject **Technological Education** aims to stimulate entrepreneurial initiative and the subject of **History** from curricular area B must offer content that includes all historical dimensions (cultural, economical, social and political).

During the school programmes analysis we can find explicit references to sustainable development. We present the full statements because the context is relevant for the way that sustainable development is understood. The subject of **Biology** has to achieve a complex objective composed of the following elements: "protecting and preserving the environment, sustainable development, and rational exploitation of natural resources, selective collection of waste, parks and natural reservations". **History** also takes into account some economic elements associated with institutional aspects including: "market economy, economic competition, progress, technology, NATO, European Union, globalization". Finally, **Geography** aims to "elaborate models and solutions for organizing the geographical space in terms of sustainable development", and for the 8th grade, when Romania's geography is taught, there is an ambiguous objective: "elements of sustainable development".

Socio-cultural representations in the curriculum

Some elements of socio-cultural content in the curriculum are presented as distinctive topics, but without appropriate depth. Cultural diversity and intercultural understanding but also a tolerant attitude, are present in thematic contexts. We also find these elements in history lessons about the connections among different cultures and civilizations, starting with the Greek attitude towards their neighbours in colonial empires, or in geography lessons about the ethnic diversity on Earth.

In the national curriculum there are more goals that refer to human right issues and equality, peace and security issues, but most of all relate to cultural diversity and intercultural understanding. For instance, when discussing curricular area B, for the subject **History** (2005), we can identify "creating knowledge that expresses all of history's dimensions: cultural, economic, social and political", which is a fairly comprehensive enunciation that can include any other element with socio-cultural content. When discussing curricular area C, for the subject **Civic Education** (2005) the focus is on "encouraging creativity and group interactions in order to responsibly

participate is social life”, and in the case of **Religion** (2005), the objective is “to capitalize on the contents by connecting it with other subjects”. In curricular area D, dedicated to art and linguistic communication, for the subject **Plastic Education** (2005), a certain “content flexibility that allows adaptation to real conditions and introduction of local and traditional culture elements” is envisaged. Finally, with reference to elements related to cultural diversity, the goal in curricular area F, subject **Physical Education** (2004), says that “curriculum is adapted to specific materials and local traditions”.

Analysing various programmes revealed several statements about social and cultural elements. For curricular area A, subject **Environment** (2003), some elements about health, are mentioned such as “rules about personal hygiene and alimentation, based on received information”. **Physics** (2005) is also seen as a contributor to the social topics through cultivating tolerance of other’s opinions.

When talking about **History**, the provision is more complex, compared to other subjects. The curriculum sets goals that implicitly require anchoring some socio-cultural cognitive contents. This way, didactic activities such as “describing prosaic aspects of life in a region, using the consulted sources”, “attending celebrations and local ceremonies”, and “group discussions on ‘travelers in the region’ notes” are mentioned. Also, the programme sets as a goal coverage of topics with explicit social and cultural cognitive content, such as “respecting fundamental human rights” and “assuming ethnic, social, religious and cultural diversity”. The programme also includes a number of units relevant for social and cultural components, such as religious reform and the Counter Reformation, civil society, civic movements and state law and human rights. In the programme for **Geography** (2005) there are goals with explicit socio-cultural content, such as “identifying and explaining the social, civic and cultural dimension of the geographical space’s characteristics” and “respect for the natural and human diversity in the present”.

Consider the 5th grade Geography handbook, where there are topics about population geography. The 4th lesson shows the racial, ethno-linguistic and religious structure of population and the 5th lesson presents, in the first part, some demographic classifications, such as gender, age, profession or residence structures. The religious diversity of the world’s population is illustrated with a world map where different dominant regions are represented in various colours. The text in the handbook is minimal and has only a definition of what we understand by the term “religion”, namely “a joint community of believers and dogmata that defines the relation between humanity and divinity” (p. 117), as well as a list of the most important religions.

The analysis of skills and values

The debates in Romania concerning student-centred education had, as a consequence, an increased attention to the skills that the system should develop. Therefore, a few key competences, such as critical thinking, interdisciplinary understanding, applications, creative ones, of the acquired knowledge can be found in almost all of the school programmes. Most of the school subjects have the same tasks regarding the competencies and they are expressed using the same stereotypes. Here are a few specific differences, as they appear in the national curriculum.

The natural sciences are considered to be able to develop of such competencies, given the fact that “science is approached as an experiential learning process”. Among the curricular objectives in Area A, we note: “multidisciplinary correlation with other sciences to simultaneously discover the common areas and us[e] an adequate mathematical formalization”, “developing learning sequences that stimulate curiosity and allows investigative activities”, “shifting the focus on to procedural learning and building personal strategies to explore and investigate”.

Subjects in curricular area B are specifically required to “develop solving problems and decision-making skills”, and Geography is required to “carry out learning activities based on a direct observation of the environment”. Another specific request is mentioned when talking about subjects in curricular area D, which is developing communication skills.

The detailed analysis of the school programmes highlights interesting aspects. For the natural sciences curricular area there are many generously set objectives like ‘developing competencies and values specific to sustainable development education’. For subjects like **Environment** and **Natural Sciences**, studied in primary school, 1st – 2nd grade, and 3rd – 4th grade, there are objectives to develop competencies such as:

- o Developing a positive attitude to the environment through stimulating interest in maintaining a balanced environment and practicing caring and protecting skills, according to element A (SV 1 – Acting with responsibility locally and globally).
- o Investigation and interpretation of the interconnections in and among biological, physical and chemical systems, according to elements SV 4 – Understanding complexity/ applying systemic thinking and SV 7 – Understanding relationships across disciplines.
- o Encouraging students to take on responsibilities and cooperate, according to element SV 1-2, Acting with responsibility locally and globally, Acting with respect to others, but also SV 13 – Participation in democratic decision-making.
- o Knowing, understanding and using communication-specific terms in order to describe observed phenomena in the environment, according to element SV 20 – Communication and understanding graphs and symbols.

Subsequently, these competencies and values are strengthened by studying each of the natural sciences – physics, chemistry, biology – in secondary education. For **Biology** (2005), the best examples of such objectives are:

- o Developing and implementing environmental projects
- o Everyday use of vegetal biology knowledge
- o Transferring experimental results in animal growth and care activities
- o Identifying the components of an ecosystem
- o Comparing natural and entropic systems
- o Protecting and preserving the environment, sustainable development, rational exploitation of the natural resources, selective waste collection,

natural parks and reservations

- o Showing an ecological way of thinking in making decisions
- o Understanding the consequences of their own behaviour in relation to the environment

For **Physics** (2005), we note the following competencies:

- o Utilising safety at work for themselves, for the other and the environment
- o Knowing and understanding physical phenomena, terminology and concepts, laws and specific working methods, explaining the operation and use of technology products encountered in everyday life
- o Trust in scientifically truths and their critical appraisal
- o Communication using scientific language
- o Utilisation of systematic methods when interpreting experimental data
- o Graphic representation of physical data variation
- o Using elementary working methods with various instruments to measure and determine quantities.

For the 5th grade **Physics** handbook we can say that the main group of competencies is represented by SV 15 – 17: observing qualitative aspects, measuring quantitative dimensions, and inference based on observing element. For each one of these research phenomena, a gradual approach of linking the observational and theoretical levels is being proposed which respects the rules based on qualitative observation of physical phenomena and relevant quantitative measurements; these in turn, create the premises of inference based on observing the general characteristics of the phenomenon. For example, through elementary observation of Archimedes' law, the hydrostatic phenomena can be inferred.

We can find similar or equivalent statements in the Chemistry handbook, to which a specific requirement is added, namely, distinguishing physical phenomena from chemical phenomena, physical properties from chemical properties and pure substances from mixtures.

For curricular area B we notice that, generally, the objectives from the national curriculum are reproduced in most of the subject programmes, with small specific additions. For **History**, we refer to “non-violent conflict resolution”, which corresponds to SV 14 – Negotiation and consensus building and also “developing prospective thinking through understanding history’s role in our life and as a predictive factor”, according to SV 5 – Futures-thinking and SV 6 – Planning and managing change elements. The **Geography** programme stipulates developing competencies such as SV 15 – 18 which include “observing qualitative, measuring quantitative, inferring based on observation, classifying, starting from observing the environment and proper knowledge about different taxonomies”.

A final observation about the exercises in the studied handbooks is that, generally speaking, compared to the handbooks from over ten years ago, we can notice an improvement in graphics and also in the contents of the exercises that connect them with the competencies’ development process. Yet, for descriptive or taxonomic subjects such as Botany, Zoology, Anatomy, Physiology or Geography,

there still is a high share of routine exercises, based on memorization.

For example in the **Environment** handbook, for the “Natural and processed materials” lesson an image of a sheepfold is shown and students are asked to answer a few questions:

- Name the elements that you can find in nature which are not transformed by humans.
- Which objects are made by humans?
- What can we obtain from sheep milk? What about their wool?
- What objects are made from wood?

The natural resources topic is introduced with a riddle: rotten trees/ blackened in the ground/ removed from the mine/ burned in the oven.

In the 5th grade **Geography** handbook for the “earth climate and climatic areas” lesson, the following questions are asked (p. 67):

- What is the difference between weather and climate? Which are the climatic factors?
- What types of climate can we find in the warm areas? Show them on a physical world map.
- Describe the types of climate in the temperate areas and map their distribution in the physical world.
- Why is it that in the polar areas the temperatures are very low?
- What kind of connections are there among temperature, precipitation and altitude?
- Look at the images and identify the climatic areas.

This group of exercises is the best way to show how to reduce the use of memory for homework. Although needed, the information is recalled in a way that facilitates using other competencies.

Things are similar when the 8th grade **Physics** handbook is discussed. Consider the “nuclear energy” lesson. Here are a few relevant questions – issues (p. 163):

- Compare the energy chains of different electric energy-producing stations.
- Describe some of the energy losses in a nuclear station.
- Which are the advantages of nuclear stations, compared to steam power stations or hydroelectric power stations?
- What kind of reaction happens in a nuclear reactor?
- Why does the uranium, used in some of the nuclear reactors, need to be enriched?
- How is nuclear fuel arranged? Try to explain this form.

Conclusions and recommendations

This research, mainly through its methodology, allows us to shape general conclusions about the presence of sustainable development education in the national

curriculum in Romania and in the programmes of various subjects in primary and secondary school (1st-8th grade).

The general conclusion is that sustainable development education is not explicitly mentioned in the current national curriculum as a specific educational objective. Sustainable development education elements do appear in some programmes, but not systematically and always without explicitly assuming this is an educational objective.

The cognitive contents specific to sustainable development education, namely, the socio-cultural, the environmental and the economic, are differently covered with the environment having the largest share of coverage. Perhaps this situation can be explained by the mistaken belief that environmental problems are equivalent to a much broader theme – sustainable development.

We consider that an improvement of Romania's situation regarding the ESD can be made only if coherent action is undertaken on the following four levels:

1. **System analysis, monitoring and evaluation.** It is necessary to continue the analysis of the educational system, using the pattern offered in this report, so that a strategic decision about sustainable development education can be adopted. For this to occur, a detailed analysis of the school programmes and a system assessment from the perspective of available human resources is needed.
2. **Developing the national curriculum.** This objective can be achieved by including sustainable- development specific components in the national curriculum. The current national curriculum is already obsolete and reflects a certain historical context, so a new one is a priority.
3. **Institutional development and educational management.** The modernization of the educational system must be done by making ministerial decisions, for subordinate institutions, including school inspectorates or other structures. In fact, these institutions themselves need to be modernized and to increase their potential by assimilating sustainable development values and synchronizing them with what occurs in developed countries.
4. **Professional development in the education system.** Nowadays, in the educational system training activities are undertaken according to various educational priorities, decided at an official level or by the labor market. An educational provision that promotes sustainable development education is also necessary, and assuming the national curriculum will improve, a *Training of Trainers* module will become mandatory.

A comparative assessment of the various educational systems reveals that countries with a high living standard are the ones that give sustainable development education an important role and that there is a connection between life standards and education. We believe that sustainable development depends on education, so investing in education leads to economic growth. Also, education can add the social and environmental dimension of sustainability to economic growth and to the market economy.

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CONTENT LIST

Below is a list of content elements that map and extract curricular content related to ESD. For ease of use the list is divided into several sections, primarily into cognitive content (knowledge, facts, learning) and SV (skill development, competences; understanding, acquiring and sharing values).

I COGNITIVE CONTENT		
I-A Social-Cultural elements		
1	Human rights	Civil and political rights, economic; social and cultural rights; environmental rights (right for clean environment) is currently debated.
2	Peace and human security	References to benefits and mechanisms of global peace, and securing "freedom from want" and "freedom from fear" for all persons.
3	Gender equality	In employment, career and salary; in political and social rights.
4	Cultural diversity and intercultural understanding	Tolerance to other values and perceptions.
5	Health	Human health, health problems, environmental health, ageing.
6	New forms of governance	New ways to manage governing of goods and communities, e.g. environmental governance (environmental aspects considered in decision-making); democratic decision-making (transparent, involving stakeholders).
I-B Environmental elements		
1	Natural resources	Minerals, forest, land, soil etc (amount, location, quality).
2	Water	Fresh water, marine water, drinking water (location, quality).
3	Air	Ambient air (quality).
4	Soil	Agricultural soil, forest soil (quality); soil erosion processes.
5	Energy	Fossil fuel-based energy, renewable energy (resources, dependence on these sources).
6	Agriculture	Role of agriculture (food, employment); position of agriculture within a wider economics system; forms of agriculture (industrial, small scale, organic, sustainable etc.)

7	Biodiversity	Species and habitats (ecosystems) - diversity, quality, loss.
8	Climate change	Global phenomenon; reasons and actions (mitigation, adaptation).
9	Rural development	Villages, communities - role, age ratio, employment; position within wider society, economic base.
10	Urbanization (urban footprint; urban sprawl)	Cities/towns - size, population, dynamics, city planning, inc transport planning; impact on the landscape and wider environment; quality of life.
11	Natural disasters	e.g. floods, droughts, volcano eruptions, tsunamis, extreme weather events.
12	Pollution	Air pollution, water pollution, soil pollution; chemical, biological, physical; systemic or accidental.
13	Human beings (as living organisms)	Anatomy and physiology of human being as a living organism; human being as a one of the living organisms in ecosystem/ biosphere.
14	Waste	Solid waste, liquid waste, waste management; recycling.
I-C Economic elements		
1	Poverty	Population living below average living standards; sanitation problems, food shortage, health care deficiency, availability of education; relation to natural resources and economics.
2	Planetary boundaries	Planet Earth has limited resources for human consumption and emission mitigation (or absorption back into biological cycle).
3	Corporate social responsibility and accountability	Companies work out and implement certain plans on responsible resource use, a positive impact through its activities on the environment, consumers, employees, communities, stakeholders and all other members of the public sphere.
4	Market economy	An economic model; its role in today's global society.
5	Production and/or consumption	Elements of contemporary market economy, role of companies, role of customers; cultural effects, environmental effects, examples from students' everyday life.
6	Sustainability, sustainable development	Sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs.

II SKILLS AND VALUES CONTENT		
1	Acting with responsibility locally and globally	
2	Acting with respect to others	In this case 'others' may include other people, other communities (anthropocentric) or other beings (biocentric).
3	Critical reflective thinking	
4	Understanding complexity / applying systemic thinking	Understanding how things influence one another within a whole, for example in ecosystems where air, water, movement, plants and animals combine to a complex effect.
5	Futures-thinking	Developing reasoning about possible, probable and preferable futures, understanding worldviews and myths that underlie them. Most clearly evident in projecting from study of history into what is likely to continue, what is likely to change and what is entirely novel. Based on spotting patterns in past and present.
6	Planning and managing change	
7	Understanding interrelationships across disciplines	Being taught how topics and processes from different scientific and artistic disciplines and subjects overlap, how individual issues may be viewed from several disciplines, e.g. physics and economics.
8	Applying learning in a variety of life-wide contents	Being instructed in how to apply the curricular knowledge in everyday life, but also basic pedagogic instructions how to learn from everyday situations (trial and error heuristic).
9	Decision-making, including in uncertain situations	Being taught about the process of decision-making, individually, within groups and whole societies. Developing a skill of decision-making in situations where there is no predetermined right outcome.
10	Dealing with crisis and risks	Learning about responses to crises and about assessing various risks in the environment. Training in managing one's own response to crises.
11	Ability to identify and clarify values	Developing skills in clarifying one's own and others' values, as well as identifying values that lie behind attitudes and statements.

12	Identifying stakeholders and their interests	Being able to discern who stands behind certain statements and attitudes and what their interests might be. Also being able to observe an issue from the multiple perspectives of different stakeholders and their interests in it.
13	Participation in democratic decision-making	Access to information, participation in decision-making (on plans and permits), access to justice.
14	Negotiating and consensus building	Resolving conflicts (for example).
15	Observing - qualitative	Part of basic science process skills: providing descriptions of the object of interest based on information gathering using one's senses.
16	Measuring - quantitative	Part of basic science process skills: using standard measures or estimations to describe specific dimensions of objects of interest.
17	Inferring - based on observation	Part of basic science process skills: formulating assumptions or possible explanations based upon observations.
18	Classifying	Part of basic science process skills: grouping or ordering objects or events into categories based upon characteristics or defined criteria.
19	Predicting	Part of basic science process skills: guessing the most likely outcome of a future event based upon a pattern of evidence.
20	Communication and understanding graphs and symbols	Part of basic science process skills: using age-appropriate scientific and mathematical symbolic language and graphs.
21	Manipulating mathematical ratios	Mathematical ratios (including equations and inequalities) are representation of relationships which in turn indicate dependency. Dependency concerns the fact that properties and changes of certain mathematical objects may depend on or influence properties and changes of other mathematical objects.

Applying Taking Clauses Analysis to Communist Nationalization of Houses in Romania¹

Emanuel-Mihail SOCACIU

The main objective of this paper is to analyse the communist nationalization of houses in Romania within the theoretical framework provided by classical discussions of the takings clauses in legal philosophy. The first thesis defended here is that nationalization should be considered as a taking, rather than a regulation. A second argument tries to support the thesis that the nationalization decree violates the taking clause of the 1948 communist constitution of Romania, in any reasonable moral and legal interpretation of it.

The legal framework of nationalization

For the communist doctrine, the rights to private property, along with their holders, were not only the theoretical source of all social and moral evils, but also the main enemies in the first political battles aimed towards building the communist society. This idea was explicitly stated by the founding fathers of communism: “the theory of the Communist may be summed up in the single sentence: *abolition of private property*”.²

After their political power had been acquired and secured, one of the main objectives for Romanian communists was to shape the constitutional framework that would make achieving this goal possible. The outcome of this effort was the Constitution of the People’s Republic of Romania, written in 1948 (the first Romanian communist constitution). The constitutional norms regarding private property do not seem too different from those of democratic regimes, at least in their letter. For example, Article 5 states that in the People’s Republic of Romania, “the means of production belong to the State, as public goods, or to co-operative organizations, or to private agents, individuals or firms”.³ Moreover, Article 8 acknowledges the fact that: “the rights to private property and to inheritance are recognized and guaranteed by law. Private property, acquired by work and savings, is particularly protected”; while Article 10 determines the constitutional framework

1 This paper was published in Romanian as “Despre naționalizarea comunistă a imobilelor și clauzele constituționale ale exproprierilor”, in *Sfera Politicii*, no. 126-127 (<http://www.sferapoliticii.ro/sfera/126-127/art04-socaciu.html>). The translation into English was first made by my colleague Oana Zamfirache (a strenuous effort for which I am grateful) and then revised by me.

2 Karl Marx and Friedrich Engels (1908), *Manifesto of the Communist Party*, New York: Labor News Co, p. 498.

3 The Constitution of the People’s Republic of Romania, published in Monitorul Oficial nr. 87 bis, April 13th, 1948. Apud. Flavius Baias, Bogdan Dumitrache și Marian Nicolae (2001), *Regimul juridic al imobilelor preluate abuziv, Vol. II: Legislație și jurisprudență (The Legal Status of Abusively Taken Houses, vol II: Law and Jurisprudence)*, București: Rosetti, p. 7.

of takings: “Takings are allowed so that public utility is achieved, on the basis of law and with a fair compensation, established by the judiciary”.⁴ These three articles determine, in its main configuration, the constitutional system of reference for the successive takings laws enacted between 1948 and 1951, before the abrogation of the 1948 Constitution (through the establishment of a new constitutional document in 1952).⁵

Among all nationalization laws, it is the Decree no. 92/1950 that provides the essential material for our discussion.⁶ Its importance resides in the fact that the majority of the houses’ takings were made possible by this decree. Actually, most of the rectifications applied after the fall of the communist regime in Romania were meant to correct the unfair state of affairs which resulted from its application.⁷ The first article of this decree establishes that: “for the consolidation and development of the socialist sector in People’s Republic of Romania”, “for a better management of the housing pool, doomed to degradation caused by bourgeois sabotage [...]” and “to take away an important means of exploitation from the hands of the exploiters “the following types of buildings were to be nationalized:

- 1) The buildings owned by former industrialists, landlords, bankers, traders and other elements of the bourgeoisie.
- 2) The buildings owned by the exploiters of the housing pool.⁸
- 3) The hotels, along with their entire inventory.
- 4) The buildings under construction, built for exploitation, which were abandoned by their owners, along with construction materials, wherever the deposits might be.
- 5) The buildings, meant for exploitation, damaged or destroyed by war or

4 *Idem*, p. 8. Compare with the takings clause of the US Constitution, The Fifth Amendment: “[...] nor shall private property be taken for public use, without just compensation” or with the same clause in the contemporary Constitution of Romania: “Nobody can be expropriated except for a public interest, established by law and receiving prior and just compensation”. (art. 44, align.3).

5 For an analysis of the Romanian Constitutions in the communist regime, see Eleodor Focșeneanu (1992), *Istoria Constituțională a României: 1859-1991 (The Constitutional History of Romania: 1859-1991)*, București: Humanitas, especially chapter VIII.

6 The 92/1950 Decree for the nationalization of some buildings, published in Buletinul Oficial no. 36, April 20th, 1950. The document is cited in full length in Flavius Baias, Bogdan Dumitrache și Marian Nicolae, *Op. cit.*, pp. 35-37

7 The 92/1950 Decree was not the only decree producing effects that post-communist laws and jurisprudence attempted to rectify. It represents a paradigmatic form of a series of normative acts, starting with the 139/1940 law, followed by the 312/1945 law, that was aimed at prosecuting and punishing the persons guilty for the decay of the country and for war crimes, and by the famous (in Romania) 119/1948 law, that nationalized the industrial companies, banks, insurance companies and mining and transportation companies, and also by a series of less important normative acts; the process continued until the end of the 70’s (for example the 58/1974 law, regarding the organization of the territory and of the urban and rural communities).

8 i.e., rented by the owners.

earthquake and not repaired or reconstructed by their owners.

The next couple of articles are also crucial for understanding post-communist decisions by both Romanian courts and the European Court of Human Rights:

“Art. II. The decree does not apply to buildings that belong to workers, clerks, work smiths, intellectuals and retired persons and they will not be nationalized.
Art. III. The nationalized buildings become the property of the State as public goods, with no compensation and do not make the object of any duties or real rights of any kind”.

Before moving from the legal framework of nationalization, I think two supplementary points should be made.

First, there is a distinction, well known in the constitutional law, between the “written” constitution and the “living” constitution (in other words, between the formal system of norms and those that are operating *de facto*, along with the agents’ attitude towards the legal documents). In the case of the early communist legislation, the difference between these two was substantial. The early figures of the communist regime often considered the application of their own laws to be a moral frivolity. The practical outcome of this attitude was that many of the takings were not *in conformity* with the law, but *related to* it. Therefore, numerous takings did not belong to any of the five categories mentioned in the decree. Moreover, a significant number of the nationalized buildings were taken by ignoring the second article, given the fact that they belonged, at the time, to urban intellectuals, to retired persons and even to workers. The situation becomes more complicated also because a significant number of buildings⁹ have been taken *de facto* with no legal decision issued by a law-court or by the local authorities, as had been stipulated in the 92/1950 decree. The distinction between buildings taken “with (legal) title” and those “without title” is crucial in the understanding of the legal debates concerning this problem and the moral evaluation of restitutive policies.

Second, we could even seriously doubt the constitutional validity of the Decree no. 92. It is, for at least three reasons, in flagrant contradiction to the constitution of that time (it had been issued by the executive and not by the legislative power; a charitable attitude towards the oppressed would justify only two out of five categories of buildings that had been taken without compensation; the nationalization without compensation directly violates the constitutional clause as it had been formulated in the 10th article of the 1949 Constitution). After 1989, the legal validity of the decree was several times disputed at the Romanian Constitutional Court, with the Court denying its own authority to issue a ruling, a controversial decision among Romanian legal theorists and practitioners.¹⁰

The hypothesis that I intend to explore further is whether (and in what degree)

⁹ According to some authors, it is the case of many of them (cf. Flavius Baias, Bogdan Dumitrache și Marian Nicolae (2001), *Regimul juridic al imobilelor preluate abuziv*, Vol. I: *Legea Nr. 10/2001 comentată și adnotată*, București: Rosetti, București, p. 45.

¹⁰ *Idem*, pp. 75-77.

communist nationalization could be analysed within the framework of a legal and philosophical interpretation of constitutional clauses for takings.

The crude positivist argument

Let’s start from a concise discussion of what we might call “the crude positivist argument”. Even though this argument is rather weak and often takes the form of an *ad hoc* plea, it has been used so often in public discourse in Eastern Europe that it might still be worth analysing.

Thus, if we believed, along with a venerable tradition of legal positivists, that the law is the expression of an unquestionable political will of the sovereign power and that the distinction between *the law as it is* and *the law as it should be* is absurd, we might put forward the following argument. In the 50’s, sovereign power was embodied by the Romanian Workers’ Party which had a communist ideology. Being the only legally recognized party and the sole holder of political power, this party had the unquestionable authority to achieve its political objectives, including the authority to enact laws promoting such objectives (such as laws nationalizing private property). The fact that after 1989 the political regime changed has put the democratic government in a new situation, where the priority would have been to manage the existent state of affairs. Why should the new democratic government be forced to pay the costs of reversing the legal decisions taken by the communists? Such decisions could be considered uninspired or inefficient, but surely not unjust if considered as part of the legal framework and values of that period.

This type of argument challenges the fundamental assumption of any attempt to justify redress or restitution: that there is a set of actions from the past that are considered unjust and the outcomes of which need to be somehow rectified. Given the fact that a law issued by a sovereign power is valid by virtue of its sheer genesis, and that we should never, even in principle, question its morality, then it is evident that amongst the “ingredients” of present states of affairs there is no “historical shadow” of a past injustice.¹¹ If there is no point in talking about past injustices, why should there be one in talking about undoing them?

This approach is completely unsatisfactory, for at least two reasons. First of all, it denies from the outset the possibility of moral evaluation. If we cannot discuss the fairness or unfairness of past laws, we cannot discuss the criteria that a new law should accord with in order to be just. Surely, we should not treat law and morality as coextensive, and the contribution of legal positivism in pinpointing the difference is remarkable. But it would be also seriously dangerous to accept the stronger thesis of some legal positivists, according to whom there is an insurmountable gap between the two realms.

The second objection to the crude positivist argument is that it completely misses its target, that is to say that it does not really confute restitution. In the best case scenario, the conclusion is that concerning legislation everything is allowed

¹¹ Jeremy Waldron labels this kind of attitude, without relating it to legal positivism, as the “*let bygones be bygones*” approach. For more details, see Jeremy Waldron (1992), “Superseding Historic Injustice”, *Ethics*, vol. 103, no. 1, 199, p. 14.

if this is the will of the sovereign power. If nationalization, as an expression of the sovereign communist power, is morally unquestionable, the same should be said about full restitution (given that it would be the will of a new political power). In other words, the crude positivist argument is self-defeating.

Although philosophically fragile, this argument is not a straw man, as one might think. There are many other versions, maybe in a slightly more refined wrapping. For example, in a similar tone, the Romanian Supreme Court of Justice ruled (Ruling no.1, February 2nd, 1995) that the Decree 52/1950 was a “governance act” that could never be censored by the judiciary.¹²

Even though the crude positivist argument is rudimentary and incorrect, it has an important heuristic quality: that of pinpointing, in a brutal form, an intuition that grounds many sophisticated debates, legal and philosophical. Directly linked to our topic is the positivist approach to private property rights (formulated for the first time by Jeremy Bentham).¹³ The core of this conception is clearly and concisely stated by Frank Michelman: “according to a so-called positivist view, a property holding’s scope is always necessarily hostage to state lawmaking. ‘Property’ in this view consists of nothing but the law’s confirmation of entitlements and prerogatives to possessors or other ‘owners’”.¹⁴ From such a perspective, the establishment of private property laws is always a question of historical accident. If the structure of transactional costs and/or political priorities would change, there would be no principled moral or legal barrier in modifying these norms. Moreover, there would be no barrier against potential changes resulting from the fancy of a hyperactive legal power. But, as Michelman asks, “can such an accordion-like conception of property possibly serve as a baseline for constitutional ‘taking’ determinations?”¹⁵ This is one of the questions that I will try to plausibly answer in the following pages, by applying this analysis to the communist nationalization of houses.

Communist nationalization and the takings clause: Blueprint for a constitutional analysis

I have suggested above that there are two incompatibilities related to Decree no.

12 Flavius Baias, Bogdan Dumitrache și Marian Nicolae, *Op.cit.*, vol.II anexa IX, pp. 205-206.

13 Jeremy Bentham (1987), *The Theory of Legislation*, Rothman Reprint, pp. 111-113.

14 Frank Michelman (1997) “The Common Law Baseline and Restitution for the Lost Commons: A Reply to Professor Epstein”, *The University of Chicago Law Review*, vol. 64, no. 1, p. 57

15 Frank Michelman, *Op. cit.*, p. 58. Michelman’s answer is negative, and his proposal is that the role of this system of reference is to be played by a political vision upon the fair distribution of public burdens. His classical polemic with Epstein is very instructive; the latter believes that a “natural” interpretation of private property rights is the most adequate for this role (see Richard Epstein (1985) (1987), *Takings. Private Property and the Power of Eminent Domain*, Harvard University Press, 1985 cap. 1-3 and (1997) “Takings, Exclusivity and Speech: The Legacy of ‘PruneYard v. Robins’”, *The University of Chicago Law Review* vol. 64, no. 1). For concision, I limit myself to mention this debate (that also featured at some point Bruce Ackerman and Joseph Sax), without working out its more detailed implications.

92/1950. On one hand, the decree clearly contradicts the constitutional clause of the takings at that time. On the other hand, the real takings, in many cases, aimed at buildings that did not belong to the categories mentioned in the decree. In this section I will expand the analysis of these conflicts.

Even lawyers often joke about the inaccessibility of legal analysis for the layman. Legal concepts are very specialized and sometimes have a different meaning from those in the common language. Even though between the specifications from the 1948 Constitution (“Takings are allowed so that public utility is achieved, on the basis of law and with a fair compensation, established by the judiciary”)¹⁶ and those of the Decree no. 92 (nationalization is to be made so that “an important means of exploitation would be taken out of the hands of the exploiters” and “the nationalized buildings become the property of the State as public goods, with no compensation and do not make the object of any duties or real rights of any kind”)¹⁷ there seems to be a logical gap, although it might be only apparent. Maybe some deeper meaning will show that the two are actually compatible.

I will try to cover this base by showing that the gap is real and that the decree violates the constitutional takings clause, *in any reasonable interpretation of it*. The objective of this attempt is not to offer a specialized legal analysis (it is irrelevant for the present argument if, for example, in 1950 in Romania there was a legal definition of nationalization as something other than a taking), but rather to explore the possibility of making them compatible through a larger framework and by using conceptual instruments from ethics and the philosophy of law.

One possible objection to the notion of incompatibility between the communist nationalization decree and the constitutional takings clause (as expressed by the 1948 Constitution) would be to challenge the thesis that the nationalization of buildings is a taking (in the usual sense of the constitutional specifications). The argument could take the following form: ‘taking’ refers to specific rights (properties) of well-defined categories of agents. For example, if the state wants to build a new highway between two cities then, according to the constitutional clause and to a law that defines the administrative procedures of the taking, the authorities would be allowed to take the necessary lands for the construction of the highway, precisely identified by geographical coordinates. (This would be an example of a large scale taking; typically, one might refer to the state taking the lands of one owner, to build, let’s say, a police station). Such taking would not affect all sets of landowners, not even all the categories of landowners that have a specific kind of activity, but only the land targeted by the highway’s trajectory (the criterion applied is not the identity of the owner, but the geographical position of the land).

The communist nationalization case seems very different at first glance. It was an act that bore the hallmark of generality; it affected every category of building owner.¹⁸ There are different ways in which we might expect the state’s decisions

16 In Baias, Dumitrache, Nicolae, *Op. cit.*, vol. II, p. 8.

17 *Idem*, p. 35.

18 For the present argument is not important that this generality was considered only in the practical application of the decree, not in its formulation (the decree clearly excepted from nationalization some specific categories of owners).

to impact upon our property rights. Through taxes, one part of our private property is literally becoming the property of the state; still, it is not plausible to think that one could win the trial if he/she would sue the government for not respecting the constitutional takings clauses. Also, if the law forbids me to use my resources in order to make a bomb, this is the same thing as to say that the respective right is being taken. In a similar way, receiving a fine for speeding is literally a taking. But, if I am a normal social being and I adhere to the dominant legal and moral culture of my time, I will not feel (too) morally harmed by this. Being formulated in general terms, nationalization is more like these kinds of examples rather than those takings whose limitation is aimed at by the Constitution. Therefore, eminent domain realm is not coextensive to these nationalization policies.

But such an argument is twice defective. First, because it assumes an implausible definition of taking. Second, its underlying arithmetic is morally questionable. The essential detail missed by this kind of argument is that, no matter what the generality of its formulation, a legal act, in its effects, bears upon individuals. Richard Epstein persuasively indicates the essence of this objection:

“[...] prima facie, the greater the numbers, the greater the wrong. What stamps a government action as a taking simpliciter is what it does to the property rights of each individual who is subject to its actions: nothing more or less is relevant, including the conduct of the government in relation to other people. The principles of eminent domain that govern a taking of all of one person’s property also govern a taking of part of that property. The principles that determine whether one person’s property has been taken, in whole or in part, also determine whether many people’s property has been taken in whole or in part”.¹⁹

A taking that affects Mary does not become something else just because it also affects John or a million other people as well. The important thing is the effect of the law for the rights of every individual.

In the proper sense of the term, a ‘taking’ refers to the effect of the government’s action upon the private property rights of individuals. The most common structure of the situation is the following: at the time t , the good x belongs to A ; at time $t+1$, the government takes (totally or partially) his or her x .²⁰ To better illustrate the difference between taking and regulation, I will use an example given by Bruce Ackerman.²¹ Let’s say that family A has two cars that are relevant for the evaluation of their living standard, each of them worth 5000 units of value. A crisis between A ’s country and an Arab country forces the government to adopt severe measures to save gas. The economical counselors suggest two possible policies.²² The first

one would be limiting the legal speed to 40km/h on all highways, and the second one would be the taking of half of the nation’s cars. In both cases, the general result would be halving the gas consumption, and the immediate consequence for family A is the net loss of 4000 units (the first measure would determine the decrease of the value of the two cars at 3000 units, and the second measure would determine the value of the remaining car to rise to 6000 units). Even though the financial loss of A would be in both cases 4000 units, the constitutional takings clause would entitle them to compensation only if the government would resort to confiscation. In the case of speed limiting, we tend to think that both cars still belong to A and that they simply decrease in value as a result of the policy (the same thing maybe would have happened if the state had not intervened and the gas price had tripled on the market). Even though such a policy could be challenged on other grounds, it is not “covered” by the constitutional takings clauses.²³

Was nationalization similar to any of these examples? The straightforward answer is that it rather resembled the confiscation case. But, if communist nationalization was a taking, we have to discuss the problem within the limitations of the two key provisos in the clause: “public utility” and “fair compensation”.

The “public utility” proviso could be understood in two different ways. On the one hand, one might argue that any objective of the state, if constitutional, is at the same time sufficiently public for it not to be questionable on takings clauses grounds. But this vague understanding, even though it does not lack supporters, is rather fragile.

The first problem becomes clear if we wonder why having the public utility proviso at all, as part of the takings clause? It is obvious that there would be no such constitutional clauses if there had not been an intention to give some protection to the individual and his or her property. On the other hand, protection is not absolute (takings are not prohibited from the outset). The takings clauses illustrate the notion of socially accepted limitations of private property rights. A plausible approximation would be that the meaning of constitutional takings clauses is to maintain a reason-

morally speaking, there is no problem for the government to adopt them. Both assumptions are questionable, but, in the end, this is an imaginary example.

- 23 At a more detailed analysis, this distinction between regulation and taking becomes even less clear, but not in favor of regulation. Any regulation that limits the options that one has concerning the use of a good that he/she owns takes one or more rights from the sum of rights he/she had had before. Given the fact that my owning a is defined as the totality of rights concerning a , if a certain part of these rights is being annulled, that means that a partial expropriation has taken place. As Richard Epstein said “all regulation, all taxes and all the modifications of liability rules are takings of private property, prima facie compensable by the state”. (*Takings*, p. 95). According to Epstein, the important difference concerns the compensation mechanism: in the case of regulations, the compensation is implicit (the compensation that the state gives me instead of my expropriation through taxes is public order, personal security or clean air.). From the constitutional analysis of expropriation, regulations become suspect when the compensation does not exist even implicitly or it is insignificant given the individual losses. If the nationalization of houses is rather a brutal expropriation, then our discussion could easily avoid the sophisticated details of this distinction.

19 Richard Epstein (1985), *Op. cit.* p. 94.

20 For a more detailed analysis of the structure of the taking problem in common legal culture, see Bruce Ackerman (1997), *Private Property and the Constitution*, Yale University Press, pp. 101 *et seq.*

21 *Idem*, pp. 124-125.

22 It is obvious that we assume that these two policies are the only ones possible and that,

able balance between the state's interventionist powers and the individuals' rights against such intrusion. More rigorously put: "stated formally, the task of a legal system is to minimize the sum of errors that arise from expropriation and under-compensation, where the two are inversely related".²⁴ But if we accept this vague understanding of public utility, the balance disappears: if there are no limitations, where is the protection of the individual? It simply means that the constitutional proviso is redundant.

There is another, more technical reason, for which the interpretation "anything that the state does, if legal, is of public utility" is wrong. According to Epstein, the key to understanding the public utility proviso is to consider what the legally and morally acceptable mechanisms for the appropriation of transactional surpluses are. The justification for such a prevention mechanism is in fact of a moral nature: that of minimizing the possibility of unjust appropriations resulted from the exercise of "less public" governmental objectives: "takings for private use are therefore forbidden because the takers get to keep the full surplus, even if just compensation is paid".²⁵ Let's take a relevant example²⁶: A owns x that he or she values at 100 units and that B values at 150 units. The transaction between the two (supposing that the transactional costs would be zero) would be determined at any price between the two evaluations, according to their negotiation skills, circumstances, etc. In principle, any of them could appropriate the maximal 50 gain; there is *ex ante* no prescribed winner. But if B has the ability to appeal to the expropriating power of the state, he could short-circuit the negotiation process and obtain x for 100 units (which approximates a primary interpretation of fair compensation²⁷) thus appropriating the maximal possible gain. The proviso of "public utility" is an instrument to prevent the use of governmental power for pursuing private ends (eventually, those of politicians, dignitaries and bureaucrats). If the above argument is correct, that means that the vague understanding of public utility is wrong. Do we have another, more reasonable one?

Epstein's answer is that public utility, in its proper constitutional understanding, can only mean two things: ²⁸ the production of public goods (in a technical sense) or goods for which there is "a public right of use" (highways, parks etc). For such a right to exist, it is necessary that the condition of universal and non-discriminatory access is satisfied. This condition guarantees "that no individual or small group of individuals [...] is able to capture the entire surplus to the exclusion of others".²⁹ For the condition of public utility to be satisfied, the important thing is that all individuals could have, in a non-discriminatory manner, the right to use the respective good, even though, in practice, it is impossible for all of them to use it at the same time.

At this juncture, it is rather easy to analyse the 92/1950 Decree from this

perspective. Even to a superficial eye, it is obvious that communist nationalization did not fulfill this condition. It didn't in its language and even less in its application.

A house, as a type of good, is different from a park or a lighthouse in an essential way. The fact that I am an owner (or even a tenant) gives me the right, in standard situations, to exclude others from using the house. There can even be more than one tenant, and normally they have the right to collectively exclude others in the period and in the conditions established by contract. Except in some rare cases (where the houses in question have become schools, hospitals, museums etc.) it is difficult to see how nationalization could satisfy the public utility condition, in its proper understanding. It is important however to distinguish between "public property" and "public utility". Through nationalization, the houses have become the public property of the state (of the entire people, as the communists liked to say); but this was only so from the legal point of view, since the "use" of the taken properties was markedly private.

There is another consideration that would give an even more brutal diagnostic. In many cases (especially those of the takings "without title") what really happened was that important people of that time (in virtue of their position in the national government or in the local organization of the communist party) had their eyes on a building and used the nationalization process (i.e. the power of the state) to obtain the "right" to live in it (that is, to private utility). Even though this kind of situation is vivid in the collective memory (especially in that of the victims) it is very often difficult to document, both historically and legally. Therefore, this kind of situation could be considered exceptional. However, they are not necessary for my argument, since the nationalization, even in its more standard form, did not abide the public utility condition.

One could object that such a conclusion is too drastic. After all, at least two of the justifications mentioned in the nationalization decree had a "public flavour". Nationalization was needed, it was said, so that a means of exploitation could be taken from the hands of the exploiters and for "a better management of the housing pool", "houses that are doomed to degradation" (see above). But the public aspect was only apparent for both objectives in the constitutional sense used here. The disabling of the exploiters was a political objective, and can be seen as public only by greatly pushing the vague and improper interpretation of the takings clause. "A better management of the housing pool" could appear more promising. But if we lift the rhetorical veil, the result is the same: the management is public only in the sense that it is made by the state, but the utility of the buildings continued to be private.

I have argued so far that the communist nationalization of houses in Romania was a form of taking (in the reasonable constitutional sense) and that it took place, with very few exceptions by transgressing the public utility condition. These conclusions work as a solid justification for the idea that the owners would have been entitled, immediately after the taking, to immediate full restitution (in the case of those whose buildings had been taken without abiding by the public utility condition) or to just compensation (where the condition was fulfilled).³⁰ From this

24 Richard Epstein (1997), "A Clear View of the Cathedral: The Dominance of Property Rules", in *The Yale Law Journal*, vol. 106, no. 7, p. 2091.

25 Epstein (1985), Op. cit., p. 164. For the complete structure of this argument, see chapter 12, pp. 161-181.

26 Cf. *idem*, pp. 164-165.

27 Eventually he will pay with state's money and not his own.

28 *Ibid.*, pp. 167 et seq.

29 *Ibid.*, p. 168.

30 Let's note that the arguments that establish the *prima facie* entitlement of owners to restitution/compensation immediately after nationalization does not function *eo ipso* as

perspective the incompatibility between Decree no. 92 and the takings clause is brutally obvious: the decree stipulates that the buildings became the property of the state without any compensation, which means that former owners could not legally claim any redress.³¹

What are the morally justified criteria by which the compensation should have been established at the time? The detailed response to this question has a direct impact upon the evaluation of the present compensation procedures for takings (for example, takings for the construction of a highway). On the other hand, there are interesting similarities between this discussion and the one on the compensatory proceedings for “historical injustices” that we will analyse at this end of this article. Moreover, recent jurisprudence (especially that of the European Court of Human Rights) uses the same instruments for calculating compensations. For these reasons, I will just briefly mention some typical responses found in the literature, without any attempt to critically analyse them. Nevertheless, they could function as an introduction to a further, more delicate and complex discussion.

Bruce Ackerman distinguishes between two manners of understanding and explaining the substance of the law. The first one is that of a “Scientific Policymaker”, while the second belongs to the “Ordinary Observer” (a legally cultured layman who is interested mainly in observing the relation between legal norms and dominant social practices).

In Ackerman’s terms, the ‘scientific’ lawyer uses specific legal concepts in order to outline the relation between the legal norms and a comprehensive view governing the legal system, while the ‘ordinary observer’ would rather elaborate extra-legal concepts in order to explore the relation between legal norms and social expectations.³² The choice between the two ways of understanding the law is essentially a philosophical choice. In practice, however, they are complementary and can both be found in the same text (as is the case in the present article).

But this scholarly distinction is important when we discuss the mechanism of establishing the amount of compensation to be paid, since the chosen philosophical perspective will guide the preferred calculation procedure.

Thus, the “scientific” position would decisively depend on the chosen “comprehensive view”.³³ Even thought, *in abstracto*, there are numerous available comprehensive views, according to Ackerman only two are dominant in present

arguments for a similar entitlement some years after. Such a presupposition would amount to a logical artifice, even though it was not uncommon in public discourse in Romania. A sound justification of the second type of entitlement should, in one way or another, account for the temporal horizon of the rectifying justice and for questions pertaining to intergenerational aspects.

31 In “A Clear View of the Cathedral: The Dominance of Property Rules”, p. 2113, Epstein tells a well known joke amongst philosophers of law and jurists that discuss the takings constitutional clause: given the fact that the constitutions take into account only the public utility, we can conclude that the takings for private use are admissible without any compensation. It is a joke that the communist nationalizers took very seriously.

32 Bruce Ackerman, *Op. cit.*, p. 15.

33 For Ackerman, “comprehensive view” means a core of principles and ideals that the legal system seems to promote.

legal culture: the one that says that the scope of the legal system is to promote efficiency (diversely understood) and the one that says that the function of laws is to promote the dignity of society’s individual members.³⁴ Intermediary positions are also possible as different dosages of the two paradigms. For our present discussion, the important thing is that using a ‘scientific’ perspective of the legal system amounts to assuming a certain set of moral presuppositions: the typical ‘scientific’ lawyer is a utilitarian, a Kantian or a combination of the two.³⁵

A utilitarian perspective upon the just compensation condition would begin with the determination of the correlation between certain types of costs.³⁶ Thus, in the most general terms, the crucial question for a utilitarian is in what degree the costs of the compensation (D) would be bigger or smaller than the other costs generated by the taking. The first important costs generated by the taking (aside from the costs for the former owners) are the costs that result from the augmentation of the incertitude. Any measure that augments the incertitude regarding social arrangements in which agents operate (and generally, takings have this quality) and that makes harder to evaluate the risks of assuming a life plan amounts to imposing costs (I). On the other hand, there are important costs generated by the citizen’s doubts regarding the general utility of the projects in name of which the takings are made (C). Therefore, a possible utilitarian criterion for the compensation quantum would be $D \leq I + C$ (compensation is considered fair *prima facie* until its costs surpass the costs of the taking). According to Joseph Sax³⁷ there are two elements that make the predominance of compensatory practices plausible in a utilitarian framework: compensations for takings reduce the motivation of the agents affected by takings to generate corruption (for example to give bribes to politicians or clerks so that the neighbour’s land should be taken over sooner) and, obviously, reduces disutility of the expropriated citizens, which, in its turn, would translate in minimizing the risk of social disorder.³⁸

From a competing perspective, loosely speaking Kantian, the criteria for the

34 Again, Ackerman’s analysis refers to American culture. But I think that it can be transferred with little inconvenience to the Romanian context.

35 “Kantian” or “utilitarian” are terms used here with no exegetic pretensions, but rather as symbols for two different attitudes towards values that could be used to evaluate a policy.

36 Starting in the 60’s, important contributions have been made for the understanding of the utilitarian interpretation of the takings clause. Hereinafter, I will use their common conclusions in very general terms, but I also want to point to more refined analysis. In that sense, see Frank Michelman (1967) “Property, Utility, and Fairness: Comments on the Ethical Foundations of ‘Just Compensation’ Law”, *Harvard Law Review*, vol. 80; Joseph Sax (1964), “Takings and the Police Power”, *Yale Law Journal*, vol. 74, no. 36 and (1971) “Takings, Private Property and Public Rights”, *Yale Law Journal*, vol. 81, no. 149 and also a very rich literature generated afterwards. For a more detailed and interpretative abstract of this discussion see Bruce Ackerman, *Op. cit.*, chapter 4.

37 Joseph Sax (1971), *Op. cit.*, pp. 63-67.

38 Given the fact that it is likely that the intensity of dissatisfaction and the tendency towards protests of the expropriated agents would often be sufficiently drastic to weight as much as the little gain of public utility (resulted in the construction of a highway, for example). This is one of the classical dilemmas concerning the coordination of collective action.

fairness of the compensation are more difficult to be quantified in a formula. Still, the frame of reference is given by the idea that, through the takings clause, the state has the legal obligation (derived from a more fundamental moral one) to make sure that the expropriated agents are not considered simple means for the promotion of some ends such as social utility, but rather they are to be treated as ends in themselves. An argument given by Frank Michelman,³⁹ inspired by Kant and Rawls, interprets the moral grounding of the constitutional takings clauses to be related to a certain idea of justice: it would be unjust if there would be major asymmetries amongst the burdens borne by each citizen for the completion of public projects. In other words, it would be unjust if only some (the expropriated) would support the costs for projects that will benefit all; the burden should be redistributed through compensation. A possible manner in which this idea could be made operational is to stipulate, for example, that a compensation that would indicate to the expropriated agent that he/she is not considered only a means is that which leaves him/her in an equal position to that before the taking.⁴⁰

On the other hand, from the ordinary observer's standpoint (that does not assume a comprehensive view, but rather tries to give a legal interpretation from the perspective of daily moral experience) the situation seems much simpler. The state has taken from me the property x, therefore it has to compensate me for (the value of) x. But even so, the discussion could take more sophisticated forms. A plausible criterion could be the following: "the ideal solution is that of leaving the individual owner indifferent to taking or keeping the property".⁴¹ The first consequence of embracing such criteria is that the reasonable basis for determining the compensation is the value of the property (its value on the market) and not the initial cost. If I bought a property with 100 units and if it cost me 100 units to operate it, and, in the moment of the taking its value on the market was 300, the reasonable basis for compensation is 300 units, not 200 (that is 100+100; let's observe that it is still the value of the property that should be considered the reasonable basis even if the value of the property would continue to be 100 or even if it would have diminished).⁴² According to Epstein, another interesting consequence is that the value of the property on the market at the moment of the taking, even if it is a good starting point for determining the compensation sum, cannot represent the sum as such. An owner that has been compensated with the market value is not indifferent to the choice between keeping the property and having it taken. The reason is quite simple: the

market value represents a fair compensation if the transaction is voluntary, if the seller wants to sell. But usually, this is not the case of the expropriated agent;⁴³ he does not want to sell and almost certainly, he does not want to be expropriated. The best solution would be to consider fair compensation as the market value of the taken property plus a sufficient bonus that would cover the transactional costs of the expropriated agent (for example, the costs related to the effort of finding and buying another property).⁴⁴ But in the majority of cases of the nationalized buildings taken through the 92 decree, there wasn't any kind of compensation whatsoever involved.

Conclusion

I have argued that the communist nationalization decree in Romania was a taking act and that, therefore, it is to be analysed within the framework given by the constitutional takings clauses. However, in Romania, the nationalization process has taken place by ignoring the constitutional clause, in any reasonable legal and moral interpretation of it. Therefore, immediately after the takings, the owners were entitled to restitution or compensation. But it is important to note that the temporal variable counts for something in the moral evaluation. The establishment of the entitlement of A at the moment T does not mean that there is a sufficient ground to assert the entitlement of A (or any agent related to A) at the moment T+50 (years). In other words, the objective of this article is not to affirm the moral fairness of restitution. For this to happen, we need an additional argument.

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- 43 For a more specialized and scrupulous argumentation, see Richard Epstein (1985), *Op. cit.*, p. 183.
- 44 In British common law, for example, this bonus is 10% of the market value (cf. *idem*, p. 184).

39 Frank Michelman (1997) *Op. cit.*, pp. 67-69.

40 For a development of the "Kantian" criteria of interpretation of the just compensation clause, see Franck Michelman (1967), *Op. cit.* and Bruce Ackerman, *Op. cit.*

41 Richard Epstein (1985), *Op. cit.*, p. 182.

42 From the perspective synthesized here an example of creative interpretation of the 'prior and just compensation' proviso was the one used the Greek state for the compensation of the owners whose lands have been expropriated for the construction of a new airport in Athens for the 2004 Olympics. Thus, the owners have received (at the time of expropriation) governmental bonds that could be redeemed after a number of years (and, with the current fiscal situation in Greece, not very soon probably). The value of the compensation was calculated as the average between the market values of the lands in the last 20 years (given the accelerated and expansive development of Athens, the differences were significant).

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Collaboration or Exit from the Stage? The Dilemma of the Elites in Dictatorial Regimes as Illustrated by the Heisenberg Case

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No one who discusses the experience of dictatorial regimes in the 20th century in Europe can avoid the questions of whether and where and under what circumstances we may justify the collaboration of scientific, technical, artistic or administrative elites with the authorities of those times. The question was adamantly asked about the people who belonged to these groups after 1917 in the Soviet Union, in national-socialist Germany, as well as in the countries of the Soviet bloc, after World War II. It also stands before the historians of today. The topic has generated many passionate, often virulent controversies in post-1989 Romania. Those who take interest in the work of Romanian philosophers: Blaga, Vianu or Noica¹ face this issue in its multiple hypostases and aspects. I mentioned these names because, just as in the Heisenberg case, I think it is about personalities characterized by an outstanding moral seriousness.

Passing a balanced, unbiased judgement on the responsibility of the elites in dictatorial regimes seems to me to be a goal which implies difficulties that can hardly be estimated. On the one hand, because the one that judges should know well and take into account all the elements of the historical background, and all the data of the situation these people faced, which is a very difficult thing to do, if not downright impossible. On the other hand, because a person judging fairly will not be entitled to operate with moral standards that are more demanding than the ones they would be willing to apply in evaluating their own actions and decisions. People that embark on such a debate should be aware that they face, at each step, the risk of failing to establish the right ratios, of simplifying things, thus jumping to shallow and biased conclusions. That which may, nevertheless, motivate them to proceed onto this mined land will have the feeling that the discussion may have a significant potential for articulating and reinforcing moral discernment.

First and foremost, I find it important to understand how hard it would be for prominent elite figures, in a relatively stable dictatorial regime, to refuse any collaboration with the authorities. Firstly, because the pressure that can be put on an outstanding personality is stronger than the one placed on the ordinary man. We should think of the loss of social status and of the acute degradation of living standards not only for the respective person but also for her family and other persons to whom she has responsibilities. We talk here, therefore, about losses that affect not only the person in question but also the members of their families, and often larger

¹ Lucian Blaga (1895-1961), poet and Romanian philosopher, Tudor Vianu (1897-1964), philosopher and Romanian literature theorist, Constantin Noica (1907-1987), Romanian philosopher.

groups of close people. These are sacrifices hard to accept when there is no prospect of change looming, even in a more remote future. It is also hard to fathom whether burning all bridges does not involve considerable risks for one's personal safety and for those that every individual feels compelled to defend and protect.

Even if prominent figures decide to accept extremely painful sacrifices and face serious dangers, they should, however, take into account yet other consequences of their refusal. Let us speak a little about these kinds of consequences. The collectivity will definitely see as a loss the replacement of a qualified scientist or professor with one less skilled and less motivated. Things will stand just the same with doctors, engineers, architects, administrators, and other experts. What will the decline of any responsibilities by the elite mean at that point to the collectivity?

Their exit from the stage will have yet more dramatic consequences. The path to the top will be opened to mediocre people, often careerists without scruples. The damage that these persons may cause will be felt by many people. The refusal of the elites to accept responsibilities will also cause the annulment of many ways in which the authorities' decisions might be moderated. This is an influence that may have significant effects, when we speak about figures of great prestige, endowed also with the ability to manoeuvre and strong persuasive capacity. It is clear that the places vacated by the withdrawal of exceptional personalities will be filled, at best, by people much less significant in terms of professional skills. Experience shows that in their relations with the authorities these people tend to become *yes men*. Those who have known intimately the functioning mechanisms of these systems will find it difficult to accept as reasonable the characterization of any reasons invoked in favour of agreeing to institutional responsibilities by professional, scientific or prominent cultural figures as a *post festum* justification for moral weakness and opportunism. We are going to have to examine, whether an assertion that Heisenberg made after the war is justified that in a dictatorship, only those feigning to collaborate with the regime can oppose resistance. When someone takes an open stand against the regime, it is clear that they waive any means to put up an active resistance.

It is true that such observations are counterbalanced by arguments that look very convincing in favour of the refusal to collaborate or of its drastic limitation. Here are just a few of them. The collaboration of a prestigious figure will be perceived in the wider circles of the population as a legitimation of the regime. It is going to dishearten those who put up resistance, even though, most often, this is a passive resistance. Vasile Bancilă, one of Lucian Blaga's admirers and friends, exclaimed in 1959 when the latter published an article that praised some of the achievements of the regime: "The Ceahlău Mountain² has crumbled down". It is only natural for ordinary people to see outstanding personalities also as moral instances. Their willingness to collaborate, with institutions subjected to the command and control of some oppressive authority, will be at least confusing to the opponents of the regime. Dictatorial systems of every kind are very well aware of this psychological effect, and they are interested in using it. They seek to get the collaboration of certain elites through a more or less well measured combination of

threats and pressure accompanied by flattery, advantages, privileges, and often by the promise that those who will assume responsibilities will enjoy a certain space for personal decision-making. They count, and for good reason too, on the fact that few people are apt to grasp the reasons of a collaboration with the authorities that is not based on fear or opportunism, on the unwillingness to give up certain benefits, but on the sense of responsibility for the life of the community. People tend to see any availability to collaborate as a sign that prominent personalities would absolve the regime of serious moral offences. For instance, in the case of the national-socialist regime, the culpability of the racial persecutions and crimes; in the case of communist authoritarian systems, the culpability of mass extermination of opponents or that of condemning a large number of persons to a life of humiliation and privation on account of their social background, or beliefs and convictions that run counter to the official doctrine. Moreover one cannot overlook the so-called argument of the "slippery-slope". Figures driven by good intentions that accept public responsibilities in these systems run the risk of no longer finding acceptable retreat paths when collaboration with the authorities involves moral compromises of the most serious nature.

In a way, we could envy those who honestly believe that the pros and cons of the implication of the elites in dictatorial regimes are very strong, whereas those opposed to them are weak. For, as they see things, there are good reasons in each case to accept or refuse collaboration. It is inferred that where talent and exceptional competence combine with the firm attachment to moral landmarks, what is asked of those who possess them is the strength of character required to unswervingly follow the voice of conscience. If we are, on the contrary, led towards the conclusion that the pros and cons stand in balance, then we will have to admit that the situation is not only dramatic, in terms of personal destiny, but also particularly questionable from a moral point of view. This is to say there is no solution that could offer the individual full satisfaction in their capacity as a responsible person.

Dilemmas such as these take a clear form as soon as things whose dissociation would be salutary in terms of moral exigencies cannot in fact be separated. How could, for instance, devotion and loyalty to the country you were born and live in, to cultural traditions and ways of life rooted deep in history, be reconciled with aversion to a repressive power when open resistance and the frontal collision this kind of resistance involves is not, at least slightly, a realistic alternative?³ By serving your country and acting for the welfare of your fellow countrymen, would you not be supporting those that hold power and have the last say in decision-making? On the other hand, while refusing any collaboration, would you not place yourself in the impossibility of achieving things that are important not just to you but to others as well, and of minimizing bad outcomes? These are questions that are to be answered by an outstanding person, who is deeply committed to fundamental moral values, when faced with the choice of assuming responsibilities or refusing any involvement. I believe that discussing a case such as that of Heisenberg may help

³ Even the most undaunted opponents take action only when they stand a chance that by their sacrifice they would obtain a weakening of the system, a strengthening of the resistance. Put otherwise, they act reasonably, solely in this case.

² An imposing mountain peak in eastern Romania.

formulate more articulate answers to such questions.

There is a consensus about the exceptional scientific accomplishments of Werner Heisenberg, but the moral evaluation of his position as chief of the programme of atomic energy, the so-called “Uranium project”, during the Second World War is still a controversial issue. There is a growing literature on the matter. No doubt, by accepting to lead such a project, Heisenberg also accepted to collaborate with Nazi authorities. Most of those who discussed Heisenberg’s behaviour in this project, presupposed that the moral reasons for accepting or refusing the collaboration were clear and without ambiguity. In my opinion, this is the presupposition assumed by some critics or supporters of Heisenberg’s activity as chief of the Uranium project. One objective of my analysis is to question this presupposition, to determine whether it is justified and to point out the limits of its justification.

Before the beginning of World War II, Werner Heisenberg enjoyed an undisputed repute within the world community of physicists. A researcher of an uncommon precocity, he was awarded the Nobel Prize in 1933, for “establishing” quantum mechanics when aged thirty-two. Works that made his name known throughout the world had been published as early as 1925-1927. In the milieu of physicists of Germany – who emigrated to the United States of America and to Great Britain when Hitler came to power – Heisenberg was also highly viewed for his character. First, as a favourite student of Niels Bohr who was worshipped in the family of physicists not only on account of his scientific work but also for his moral integrity; secondly, for his courage and consistency of belief. In 1933, Heisenberg signed, together with Max Planck, Max von Laue and Arnold Sommerfeld, a petition of protest against the dismissal of Jewish scientists from German universities. What captured special attention was that the young professor⁴ did not hesitate to continue giving lectures about the theory of relativity of Albert Einstein, an odious name to the German authorities. These nonconformist stands made Heisenberg one of the targets of attacks by the advocates of “Aryan physics” against the so-called “Jewish physics”.⁵ In 1937-1938, Heisenberg had become so overwhelmed by these attacks that he seriously considered emigration.⁶ He gave up the thought only when the attacks stopped upon the intervention of the authorities. This intervention was dictated by the fact that, after the massive emigration of scientists of Jewish birth, the loss of a valuable physicist such as Heisenberg was not desired.

In the summer of 1939, shortly before the German attack against Poland,

4 Heisenberg held the Department of Theoretical Physics of Leipzig University in 1927, becoming the youngest professor in the history of the German university.

5 In public speeches and press articles, Heisenberg was stigmatized as a “white Jew” and “spirit from Einstein’s spirit”. For more details on this topic see H. Rechenberg, *Werner Heisenberg. Deutsche und Jüdische Physik*, München/Zürich, Piper Verlag, 1992.

6 In a letter addressed to his former professor, Arnold Sommerfeld, on April 14, 1938, Heisenberg wrote: “Right now, I don’t have any other choice but to require my dismissal should I be denied the right to defend my honour [...] . You know too well how painful it would be for me to leave Germany; I wouldn’t like to do it unless absolutely necessary”. (Quoted after Armin Hermann, *Werner Heisenberg*, Reinbeck bei Hamburg, Rowolth Taschenbuch Verlag, 1976, p. 63).

Heisenberg paid a visit to the United States of America. He was warmly welcomed both by the American hosts and by the physicists that had emigrated from Germany. The latter in particular – Eugen Wigner, Leo Zsilard, Hans Bethe, Victor Weisskopf, Edward Teller – tried to persuade him not to return to Germany. Heisenberg received offers from highly reputable American universities that proposed most attractive positions. No one succeeded in making him emigrate.

Here are the explanations that Heisenberg gave later on for this decision. The positions in western universities should be given to those who could not stay in Germany and Austria. The path toward taking the leadership of scientific institutions in Germany should not be opened to careerists and even less to supporters of national socialism. He, Heisenberg could not desert his young co-workers who would find it difficult to get opportunities to further their career as researchers outside the borders of Germany. Last but not least, he hoped to be able to build some “islands of stability” and, given his scientific prestige and his loyalty to Germany, to attempt to influence some of the authorities’ decisions. Should a war break out, he would be able to prevent or limit the sending of young physicists to the front. To the observation that in his capacity as an atomist physicist he could be compelled to take part in military programs, Heisenberg answered that, first, the possibility of using nuclear power to manufacture weapons was at least problematic (an opinion shared at the time by physicists of democratic countries as well), and secondly, should it be proved that a nuclear weapon could be built after all, this could only happen much later, after the war had ended. Heisenberg also admitted that his staying in national-socialist Germany would force him to make painful compromises. The conclusion was that for a man in his position there was not, in general, a truly good alternative. In this respect, he quoted an observation that Planck made after Hitler had come to power, when Heisenberg asked him what was to be done: “Under the terrible circumstances that we find today in Germany, there is no way one can act fairly. Every decision makes one part of an injustice”.⁷ Planck’s words express most suggestively the state of mind of a patriot who foresaw that the regime installed in 1933 would lead the German people to catastrophe, but also believed that researchers loyal to the country, particularly those belonging to the younger generation, should think of the future of German science. Those words also mirrored Heisenberg’s frame of mind.

His colleagues in the United States could not ignore the impression that in Heisenberg’s reasoning, the feeling of belonging to the German nation somehow

7 See W. Heisenberg, *Der Teil und das Ganze. Gespräche im Umkreis der Atomphysik*, München, Piper Verlag, p. 209. It is worth mentioning that after the war a similar opinion was stated by the German astrophysicist Walter Grotrian in a letter to the renowned Jewish physicist Lise Meitner, who left Germany after the national socialists came to power. Grotrian characterised the situation of German patriots, who had an hostile attitude towards the Nazi dictatorship, as follows: “We only had the choice between different evils, without being clear which one is the worse. I have considered the total destruction (*völlige Niederlage*) of Germany as the worst among them and after it had happened I found my fear confirmed”. (The letter is dated on the 29.12.1947) Quote after Dieter Hoffmann, “*Kopenhagen*” war kein Einzelfall, in Michael Frayn, *Kopenhagen*, Göttingen, Wallstein Verlag, 2001, p. 187.

overshadowed the fear that the national-socialist regime would cause an unprecedented catastrophe in the history of Germany. Heisenberg did not seem to understand that a dictatorial regime inspired from the doctrine of racial hatred would inevitably become a criminal regime. He was not prepared to separate very sharply the interests of the German people from the policy of the authorities. That is why his friends in America did not fully understand him and, in the years that followed, they were inclined to increasingly suspect his political reasoning. His refusal to leave Germany was seen as a disquieting indication of his willingness to collaborate with the authorities of the state. This was all the more disquieting as Heisenberg was deemed by far the most capable German physicist. These suspicions were actually corroborated by some of Heisenberg's remarks and reactions during the war. It was obvious that he did not want Hitler to win, but he did not want a total defeat of Germany either and much less so the strengthening of the position of the Soviet Union that would have been one of the consequences of such a defeat.⁸ Right after the hostilities had started, in September 1939, Heisenberg and some of his close colleagues were mobilised for the Uranium programme, a research project of the German army meant to establish whether nuclear power could be used for military purposes. It was already a matter of common knowledge that the raw material for a chain reaction was uranium 235, an isotope extremely hard to separate from uranium 238 that could easily be procured. At that time, the opinions of German researchers as to the technical possibilities of obtaining a larger quantity of uranium 235 were divided. After the war, Heisenberg justified his being part of this project as follows. Together with his colleagues, he made from the very beginning the distinction between a reactor capable of producing energy and a bomb that required uranium 235, asserting that the first project was feasible whereas the second was beyond the technical possibilities existing in Germany at the time. He also believed it is very important that responsible people should keep control over the project, and that thanks to this project many young physicists would not be sent to the front.⁹ The

8 There are confirmations of these suspicions that were invoked insistently and even overstated by those colleagues and historians that sketched, after the war, a negative moral portrait of Heisenberg. He said, for instance, to the Dutch physicist Hendrik Casimir that Germany had the role to protect Western culture from the threats coming from the East, and concluded: "A Europe under German leadership might be the least harm, though". In general, Heisenberg would clearly express his opposition to the regime in the circle of his friends, but he was trying to protect Germany in front of foreigners, hesitating to explicitly separate the interests of its people from Hitler's policy. While in Zurich for scientific conferences in December 1944, on the invitation of his Swiss friend Paul Scherrer, the latter's wife asked him what he thought about the atrocities perpetrated by the Nazis against the Jews in France and the Netherlands. Heisenberg's reply was that he had no knowledge about that. Accused, on the same occasion, by young physicist Piet Gugelot, who was in Scherrer's team, that he supported Hitler's policy, Heisenberg replied: "I am German but I am not a Nazi". With regard to the Soviet danger, Heisenberg answered his colleague Gregor Wentzel who had asked him whether he accepted the idea that the war was lost: "Yes, but it would have been great if we had won". (See Thomas Powers, *Heisenberg's War: The Secret History of the German Bomb*, New York, Da Capo Press, 1993).

9 See W. Heisenberg, *Der Teil und das Ganze*, pp. 236-239.

reasonable character of these considerations cannot be questioned, even though it could be said they are *post festum*.

In mid-1940, Germany was in a favourable position to obtain the raw material for the chain reaction. Beside the uranium from the mines in Czechoslovakia and the one from Congo that had been requisitioned by the German troops in France, it also possessed the sole heavy water plant in Europe in Ryukan, Norway. Had those involved in the project, Heisenberg first among them, been determined to try making the bomb, they should have demanded at that point the concentration of all existent scientific and technological forces, as well as considerable funds to allow the process to be speeded up, thereby accelerating all those activities that were crucial to building a weapon that could assure the war would be won. This is what was done in the United States of America in 1942 for the Manhattan project. The military and civil authorities were not, however, informed by the researchers on the exceptional military significance of the programme. Heisenberg, for instance, continued to live in Leipzig, where he saw to his duties as a professor, and came to Berlin just once a week for the Uranium project. While in America, the emigrants were becoming highly worried and warned the authorities about the imminence of a German nuclear program with military objectives, Heisenberg was telling anti-Nazi physicist Friedrich Georg Houtermans that his goal was to build a reactor and not a bomb, and to protect his colleagues during the war.¹⁰ All these seem to indicate that Heisenberg did not have the intention or the desire to build a nuclear weapon. Together with his colleagues, he had not even reached, at that moment, a basic conclusion about the possibility of manufacturing such a weapon.

Things changed, however, in the summer of 1941. Theoretical research had got to a point that indicated a nuclear bomb could be made provided huge resources were mobilised to solve extremely difficult technical problems. This conclusion created a great deal of worry. Heisenberg and his closer co-researchers knew now that the other side might build the bomb as well. And they assumed that German researchers close to the regime might warn the authorities. The consequence would have been a fierce race between the two sides to achieve the project. What had Heisenberg set his mind to, in all likelihood, so as to prevent such a development? On the one hand, he believed that scientists did not have the moral right to get involved in manufacturing weapons of mass destruction, especially weapons with such destructive potential. On the other hand, he thought that the resources of the countries in the anti-Hitler coalition were bigger, and that should the weapon be manufactured, it would inevitably lead to the catastrophic defeat of Germany that he did not want to see happen.

Should we assume that Heisenberg and his friends saw things this way, then they should have tried to do two things. First, they had to keep the confidence of the authorities in order to be able to influence their decisions, and secondly, to send to the other side the message that no nuclear weapon was going to be manufactured in Germany. The indirect suggestion was that the ongoing war was to be fought with conventional weapons. At that time, and during the following period, Heisenberg deemed that sending a message like this was crucial since the very fear that Hitler

10 See Houtermans' story at the end of the war, quoted by Thomas Powers, *op. cit.*

might have a nuclear weapon built would be the main motivation for the political leadership and the researchers in all democratic countries to mobilise all forces and resources in the project of manufacturing the bomb. As long as the supposition that Germany could build the bomb seemed credible, the stake was neither more nor less than the survival of the free world.

Heisenberg thought it was important to check whether his analysis was correct and, at the same time, to try to convey the message to the other side.¹¹ Together with his closest colleague, Carl Friedrich von Weizsäcker, Heisenberg thought that the best way to attain these goals was to have a confidential talk with his scientific mentor and old friend, the prestigious Danish physicist Niels Bohr. Heisenberg intended to confer with Bohr about what he should tell the German authorities, and he would have also liked to find out from Bohr whether the Allies were working on manufacturing a nuclear bomb. He hoped that through Bohr a joint stand and a convergent action of physicists worldwide could be established on the question of the nuclear bomb. The relationship between the two had been very tight; during his stay in Copenhagen in the 1920s, the young German physicist was treated like a member of Bohr's family. Heisenberg surmised that it was precisely the full confidence that characterized his relationship with his Danish friend which might favour his audacious project. An encounter with Bohr that should not attract the attention of the special services could have been possible only provided Heisenberg had paid an official visit to Copenhagen. Circumstance worked in favour of this project. In Copenhagen there was a German cultural institute subordinated to the Foreign Minister in Berlin, and the Secretary General of the Ministry was at that time career diplomat Erich von Weizsäcker, the father of Carl Friedrich. This is how Heisenberg's visit could be arranged in September 1941 at the head of a group of German researchers. The members of the delegation were supposed to give scientific lectures and have talks with their Danish colleagues.

Heisenberg and Carl Friedrich Weizsäcker underestimated from the start the risks of their double game. They were arriving in a country occupied by Germany, as guests of the authorities of the national-socialist regime of Copenhagen; put otherwise, they were there as official envoys of a country that was perceived by the Danish public opinion as the enemy. On the other hand, the planned talk, that could not avoid the military project Heisenberg was involved in, was, in the eyes of the German authorities, an act of treason. At the worst, Heisenberg was running the risk of being charged of high treason. It was highly improbable for him to have an open talk with Bohr without the authorities becoming suspicious.

What happened in Copenhagen? The encounter between Heisenberg and Bohr took place at the acme of the policy of expansion of Hitler's Germany. The German

¹¹ This is about a message different from the one already sent by Houtermans. Through the agency of German physicist Fritz Reiche, a former assistant of Planck's and friend of Einstein's, who had emigrated to the USA in May 1941, Houterman had communicated that Germany was working on a military project for using nuclear energy. And although the German physicists, led by Heisenberg, did not enthusiastically cooperate in that project, striving even to slow it down, they could be subjected to great pressure, so the other side had better hurry things up. (After Thomas Powers, according to an interview with Reiche taken in 1962).

troops were getting closer and closer to Moscow, and the victory against the Soviet Union looked to be near. The occupants were increasingly arrogant, and the anti-German frame of mind of the population was more acute with every passing day. Heisenberg failed to understand something crucial, and that was that under the circumstances Bohr was going to see in him not only his old friend but also the envoy of an enemy country.

Bohr had no way of knowing Heisenberg's political stance but, instead, had good reasons to presuppose that he too had been contaminated by the euphoric state Hitler's military victories had brought about in Germany. Bohr's suspicion grew following certain allegations Heisenberg made during talks with his Danish colleagues, before their meeting. Accepting that he could not justify the occupation of Denmark, Heisenberg held that the inroads on Poland and the Soviet Union had been good and necessary. Heisenberg could not avoid political discussions and at the same time could not have expressed a stance opposed to that of the German authorities as long as he did not have perfect guarantees of confidentiality. Bohr did not realize Heisenberg played a double game and took his statements as an expression of his actual opinions. Moreover, Bohr was bound to associate the trust publicly voiced by Heisenberg in the victory of Germany with the hope that the Germans would be the first to develop an atomic weapon. All this in no way fostered a background of full mutual trust.

There is a version by Heisenberg of the talk but no written rendition by Bohr.¹² Based on Heisenberg's comments and on what Bohr recounted to the members of his family, the encounter can be reconstructed as follows. First they talked about the war. Heisenberg told Bohr, among other things, that the defeat of the Soviet Union would be desirable. Bohr did not agree. His irritation did not represent a happy premise for good communication on the major topic of discussion. Heisenberg asked him whether he believed physicists had the moral right to work on projects involving atomic power. This question Bohr answered by another, namely, whether an atomic weapon could be developed. Heisenberg replied that, in principle, such a project was feasible but that a long period of work and colossal efforts would be necessary to reach that goal. And, he added that physicists could argue in good faith in front of their governments that the bomb would not be ready to use in the war underway.

Bohr was so shocked to learn from such a competent physicist who worked on a military program that the bomb could be developed that he no longer evinced the needed readiness to continue the discussion. When Heisenberg asked about the possibility that the physicists in both camps might agree not to promote the project, Bohr replied that it was only natural that in wartime researchers should work

¹² The first version of Heisenberg's talk with Bohr can be found in Robert Jungk's book, *Heller als tausend Sonnen*, published in 1956. After Bohr's death, in a copy of this book, found in his bookcase, a letter was discovered addressed to Heisenberg. It contained corrections and amendments of the version related by Heisenberg. In the end, Bohr chose not to send the letter, which is preserved today in the Bohr Archives. The controversies in connection with the Bohr-Heisenberg meeting aroused by the publication of Jungk's book were recently enhanced by the play of British playwright Michael Frayn, *Copenhagen*. The artistic transposition of the 1941 meeting has Bohr, his wife Margrethe, and Heisenberg as characters.

for their governments. He thought that what Heisenberg wanted was to persuade physicists from the allied countries not to get involved in the project. What he retained was that German physicists knew how to make the bomb. Consequently, he assumed they were working intensely to carry out the project. In an interview with historian David Irving, dated October 1965, Heisenberg admitted that the proposal he had put forth could have seemed suspect to Bohr as long as the United States enjoyed better premises to build the bomb than Germany, and it was but natural to try to use their edge against Hitler in this field, as well.

Heisenberg realized from the very beginning that Bohr had not understood his message properly. In fact, things were even worse. The effects of the talk were largely opposed to what Heisenberg had wanted. Bohr was inclined to believe that the Germans were working on the design of the atomic bomb and that Heisenberg would have wanted to learn from him what the other side was doing. This is what Bohr said at home, when he returned after the meeting, as well as when he reached the United States, in 1943. Later, Bohr refused to say anything about Heisenberg's visit although his wife appreciated that the visit was that of an "enemy". In any case, it was to be expected that Heisenberg's plan to communicate, via Bohr, with the atomic physicists in the other camp would fail. Heisenberg wanted to have an open conversation with Bohr but did not realize that, under the circumstances, such a thing was not possible.

After the war, Heisenberg wrote a text, entitled *The active and passive resistance during the Third Reich*, which was not published. Taking into account that the national-socialist regime gained stability in the period before the war started, Heisenberg considered that those who directly opposed it were only left with the choice of emigrating or waiting for the regime to be removed from power by external opponents. He called this resistance against the regime *passive*. The other solution, of opposing the regime, was to win the authorities trust in order to influence the state of affairs in the opposite direction of the regime's interests. Those who chose this path, which implied many compromises, took the risk to be labelled later as collaborators. Nevertheless, they could exert a kind of influence on the course of events counter to the regime's intentions. This is what Heisenberg characterized as *active resistance*.

Despite opinions to the contrary, it can be argued that the way Heisenberg reacted later on illustrates what he thought of "active resistance" and more precisely, the sense that he and his collaborators had accepted concessions in less significant matters in order to be able to wield their influence in decisions that were truly important. Many of Heisenberg's actions and stances during the war can be seen from this perspective.

A talk with scientists, in July 1942, attended by high civil and military officials, and headed by the minister of military production, Albert Speer, represented the turning point in the history of the German atomic project. Heisenberg was the major speaker on behalf of the scientists. First he deplored how German research was lagging, one reason being on account of the fact that many technical staff from laboratories had been sent to the front; in this way he managed to have hundreds of them recalled. Further on, Heisenberg insisted on the possibility of building a reactor that could produce energy. As an answer to Speer's question, he asserted,

just as he had done in his talk to Bohr, that in principle it was possible to build an atomic bomb, but such an action would require huge efforts and expenditure. And the project could be slowed down if not actually jeopardized by an intensification of the air raids over Germany. An energy-producing reactor could be built though with relatively modest means. As far as the prospects of the Americans were concerned, Heisenberg appreciated that they could build a reactor by the end of 1942 and a bomb by the end of 1944, at best. Everyone was convinced, however, that by then the war would have already ended. After the war, Heisenberg underlined that his prognosis had been correct. And he added that it was highly lucky for the German researchers to have asserted in good faith that the production of an atomic bomb to be used by the German army was not a feasible project.¹³ Such a presentation of the situation, under conditions when the German leadership appreciated that only armaments projects that could yield results in a short period of time should be supported, had the results envisaged by Heisenberg. Later, he told historian Irving that when he had warned of the huge costs and the long period of time necessary to build an atomic bomb, he knew that Hitler had decided to no longer pursue military projects the results of which would take more than a year.¹⁴ Speer trusted Heisenberg completely. He would have agreed to throw in all available resources, had he been told that the bomb could be developed in a short interval of time. Not only did Heisenberg not promise him that, but he also provided something of an equivocal answer to the question of whether the chain reaction could be controlled and if there did not exist the risk of a planetary catastrophe. Thus informed, Speer decided to pull the army out of the project, and Heisenberg was charged to conduct the building of a reactor. In Speer's memoirs we find the following revealing excerpt:

"At the suggestion of experts in nuclear physics we renounced the construction of the atom bomb as early as the autumn of 1942. Then I asked one more time in what interval of time that project could be accomplished and I was answered that three or four years should be considered, a period in which the outcome of the war would have been long cleared".¹⁵

The testimony of Speer, which makes clear he had no interest in defending the prestige of German atomic researchers, shows without a shadow of doubt that it was these very scientists who played a decisive role in abandoning the construction of the atom bomb for the German army. The year 1942 was a decisive one. Subsequently, the United States resolved to work at a most sustained pace, mobilising all the available material and human resources to build the bomb, while in Germany a project continued, with approximately a tenth of the previous funds, to pursue the production of nuclear power for the industry and for transport.

In his book, Robert Jungk wrote: "It seems paradoxical that German physicists,

13 See W. Heisenberg, *Über die Arbeiten zur technischen Ausnutzung der Atomkernenergie in Deutschland*, in *Naturwissenschaften*, 33, Dec. 1946, and *Gott sei Dank, wir konnten sie nicht bauen*, in *Spiegel*, July 3, 1967.

14 See Th. Powers, *op. cit.*

15 See Albert Speer, *Erinnerungen*, Berlin, Ullstein Taschenbuchverlag, 2005.

who lived under a military dictatorship should listen to the voice of their conscience, trying to prevent the development of the bomb, while their colleagues in democratic states, who had no reason to fear oppression, embarked with utmost energy in the service of the new weapon, with very few exceptions”.¹⁶ Subsequently, the author reviewed his opinion. Heisenberg did not agree with that statement from the outset. He rejected the suggestion that German researchers would have thus proved superior, from a moral point of view, to their colleagues in the United States. The former did not deem the objective of the political leadership – winning at all costs – to be their own cause as the latter thought. For the Germans, Heisenberg appreciated in retrospect, that it was lucky they could support with fine arguments the unrealistic nature of developing an atomic weapon in such a short time. On the other hand, the scientists in the other camp had an entirely different attitude. Immigrant physicists, who played an important role in the promotion and completion of the Manhattan project, still had vivid memories of the persecutions they had endured not only from German authorities, but sometimes also from their German colleagues and professors. As well as the frustrating feeling that they had not been protected by those German students and professors whom they respected. Together with the other researchers in the United States, they could not understand Heisenberg’s refusal to immigrate and did not put it past him to have zealously worked to produce the bomb. Their plausible conclusion was that there existed a race to manufacture the weapon, and that victory in that race would be decisive for the survival of the free world.

Two things appear essential in order to appreciate the attitude of Heisenberg and of other members of the German scientific elite, in this context. First, they did not inform the authorities on the preparations of the other side to build the bomb although they possessed significant clues in this respect. Second, they tried repeatedly to convey to the other side the information that the relevant programme had been dropped in Germany.

As far as the first aspect is concerned, Heisenberg and his colleagues stressed, whenever the officials asked them, that in order to implement the project not only huge resources were needed but also a lengthy period of time and consequently, it was practically out of the question that such a weapon could be used in the ongoing war. On the other hand, they did not help the German authorities understand the true significance of certain actions by the Allies, such as the repeated bombing of the heavy water plant of Ryukan, Norway, then under German control. Early in the summer of 1944 an aide of Goring asked Heisenberg if he believed the Americans were building such a bomb, and the answer he received was in the negative.¹⁷ In exchanges among friends, Heisenberg deemed they had mixed chances in that regard. In other words, he avoided offering his true opinion before authorities that considered him a loyal subject.

The second aspect also deserves special attention. There are numerous testimonies regarding the attempts of German experts to establish communication with their colleagues in the opposite camp. Thus in the summer of 1942, Hans Jensen, a physicist at the Hamburg University, conveyed to Bohr the fact that in

Germany they worked on a reactor that would produce energy, and not on an atomic weapon. Heisenberg himself told Fritz Houtermans, whom he knew to have relations of trust with physicists from countries with interests inimical to Germany, as well as Swiss physicists Wentzel and Scherrer, that he worked only on the construction of a reactor. There is no need to underline that transmitting such information was extremely risky. Had this become known to the German secret services it could have led to an accusation of treason. One can hardly contest the point that such “collaboration” with the authorities represented an act of resistance.

On the other hand, we may be surprised that Heisenberg and other German scholars did not see that their efforts to communicate with the other side were doomed. The allied secret services interpreted these messages as various attempts to mislead the enemy. In the atmosphere of general suspicion existing at the time, Oppenheimer and his collaborators considered even the sketch of a reactor that Heisenberg gave to Bohr when they met in Copenhagen to be that of an atom bomb. Oppenheimer even agreed to the idea of the American secret services kidnapping Heisenberg on the occasion of his visit to Switzerland, in December 1944.¹⁸ This is a clear indication that the US physicists did not believe the messages conveyed, in various ways, by their colleague from Germany.

Two points of view have been aired in connection with the controversies between Heisenberg and his critics after the war, as well as with the later disputes between historians. According to the first, accepting an institutional position as well as the collaboration deriving thereof with the authorities of a regime that proved murderous unconditionally triggers a justifiable harsh moral condemnation of the person in question. According to the second, it is exactly this collaboration within certain limits that constituted the necessary premise of an active resistance.

Heisenberg’s major critic in the years following the conclusion of the war was Samuel Goudsmit, an American physicist of Dutch descent. The two had been friends in their youth. On the occasion of Heisenberg’s visit to the United States, Goudsmit tried to persuade him not to return to Germany. In 1944, Goudsmit was appointed scientific director of the ALSOS mission, in charge of gathering information on the German atomic project and capturing the German atomist physicists in order to extract from them where Germany stood with research, and at the same time to prevent them from working with the Soviet Union. In that position, Goudsmit met Heisenberg in May 1945. The German, who did not know anything about the American atomic program, seemed “arrogant” to Goudsmit because he offered to convey to the Americans the results of his research on uranium. That offer gave substance to Heisenberg’s conviction that the German atomist physicists knew more than their colleagues overseas. When asked by Goudsmit if he wanted to work in the United States, Heisenberg supposedly answered: “No, I don’t want to leave. Germany needs me!” All this irritated Goudsmit who was traumatized by the news of his parents being killed at Auschwitz. In his official report of May 11, 1945 on the conversation, he noted that Heisenberg took an anti-Nazi, yet strongly nationalistic stand. Goudsmit’s resentment grew when he read the records of the talks carried by the German physicists retained in a castle in England, in August 1945, when the first

¹⁶ See R. Jungk, *op. cit.*

¹⁷ See Th. Powers, *op. cit.*

¹⁸ These information and others can be found in Powers’ book.

atomic bomb went off in Hiroshima. Their negative reaction to the production and utilisation of the bomb, as well as their insistence on the idea they had not worked to build the bomb led Goudsmit to believe that German physicists considered themselves morally superior. Irrate, he acceded to the conclusion that German physicists had wanted to build the bomb but failed out of incompetence and they were now trying to hide this failure by evoking moral scruples that, in fact, they did not have. In his book, published in 1947, on the ALSOS mission, Goudsmit maintained this point of view and reproached Heisenberg for his lack of sincerity. The atmosphere after the war, when the hard-to-imagine atrocities perpetrated by the Nazis were discovered, turned frequently on just such biased judgements, commonly accepted by western scientific circles. Frayn's play, which builds the plot on meticulous historical documentation, as well as Powers's book, shows that things are more complicated. It seems that Heisenberg indeed miscalculated the amount of uranium 235 necessary to obtain the critical mass, although reports in this respect are contradictory. In any case, the night after Hiroshima Heisenberg correctly explained to Otto Hahn that the bomb operated with rapid neutrons in uranium 235. It is entirely plausible that if Heisenberg and his collaborators had had a comparable motivation to build the bomb, as their colleagues in America did, then mistakes like the one mentioned could have been discovered and corrected. In fact, German researchers did not even get as far as approaching the technical data related to the production of the bomb.

Heisenberg tried for a while to communicate with Goudsmit in order to reach an agreement on facts and, on this basis, an unbiased moral valuation. He underlined that he had understood very well the difference between building a reactor and a bomb and that he worked only on the first project. A reactor operates with natural uranium and slow neutrons, and Heisenberg knew very well that the bomb required pure U 235 and rapid neutrons. In a letter dated September 23, 1947, Heisenberg described to Goudsmit the psychological state of German researchers who opposed the totalitarian system but worked, nonetheless, on government programs, in the following terms: "On the one hand I realized that a victory of national socialism in Europe would have terrible consequences, and on the other, taking into account the hatred arisen by this political trend, it was obvious there was not too much hope if Germany was thoroughly defeated. This situation automatically led to a passive, reserved attitude, to assistance granted on a small scale to save what there was still to save or to an activity that could prove useful later".¹⁹ Condemned to be on the defensive, Heisenberg did not even mention actions that did not illustrate "a passive attitude", as the insistent signals conveyed to their colleagues in America that Germany was not working on the bomb, or the refusal to draw the attention of the German authorities to obvious indications that the other side was. For Goudsmit and those who shared this opinion the decisive fact was that Heisenberg had accepted official positions and responsibilities in a state that created "the camps of death". Heisenberg was profoundly affected by the failure of his repeated attempts to explain the logic of his position. Finally, he resigned. His wife explained this resignation in terms of his wounded pride.

¹⁹ Quoted from Th. Powers.

The controversy between the historians who pass harsh judgements on him or who vividly defend him continued unabated. In his book, published in the year 1998, *Heisenberg and the Nazi Atomic Bomb Project: A Study in German Culture*, British historian Paul Lawrence Rose endowed Heisenberg with Nazi value representations, as well as the desire to serve Hitler's regime unreservedly. It is surprising that Rose did not think that a man who had such persuasions would have acted completely different in many situations than Heisenberg had between 1939 and 1945. Rose also attacked the play of his fellow-countryman, Frayn,²⁰ saying that it seriously distorted Heisenberg's relations with national socialism. The fact that in the play Heisenberg and Bohr are presented as comparable personalities from the vantage of moral responsibilities seems scandalous to Rose. Heisenberg, the British historian remarks, never acknowledged his moral responsibility for having collaborated with the Nazi authorities, while Bohr regretted his involvement in the construction of the atomic bomb in the United States, such as it was.²¹ The main target of Rose's attacks remains the book on Heisenberg written by American journalist Thomas Powers. Following a considerable effort to put together and analyse revealing facts, Powers comes to the conclusion that had Heisenberg identified himself with the goals of the regime during the war years, he would have behaved entirely differently and would have engaged in completely different initiatives. There is no document showing that Heisenberg would have ever attempted to persuade the authorities to support a project to build the bomb. Many of his actions illustrated, on the contrary, what he called an "active resistance". None would have been possible if Heisenberg had not enjoyed the officials' confidence. It can be convincingly added that had the famous physicist openly declared himself against the system and been eliminated from the institutional picture, the project of an atomic bomb for the German army would not have been buried so quickly, and would, perhaps, have been resumed. This is the main way in which Heisenberg did not support Hitler's regime in the least. It is true he never stated it publicly not only because he did not want to appropriate merits that could have been interpreted as exaggerated in the general atmosphere of the post-war years but also because he would have had to admit that he had actually not been loyal to the authorities that granted him high positions and trust. In this respect, Heisenberg was faced with a dilemma not only in the years of the national-socialist regime, but also later on, to a certain extent.

Among those who positively or negatively assess Heisenberg's behaviour, as leader of the Uranium project, there is a consensus on a single point. That is, he had an important role in shaping the course of events which led to abandoning the project of building an atomic weapon in Nazi Germany. From this point on, the interpretation of facts given by historians begins to differ and guides them to sharply opposing conclusions.

Some, like Paul L. Rose, claimed that Heisenberg wanted to serve the Nazi regime and to provide the atomic weapon. His failure might have been caused by serious scientific mistakes in assessing the necessary quantity of uranium 235 for

²⁰ Michael Frayn, *Copenhagen*, 1998.

²¹ See also P. L. Rose, *Kopenhagener Deutung-Heisenbergs Leseart*, in M. Frayn, *Kopenhagen*, p. 229.

building the bomb and the so-called “critical mass”. These mistakes led Heisenberg to be sceptical about the probability of building an atomic bomb in such a short time. Therefore, Heisenberg’s loyalty towards the regime is not questioned by this role in abandoning the project by the military authorities, in the summer of 1942. Others historians, like Thomas Powers, straightforwardly defend the active resistance thesis, and even the extreme version of sabotaging the project. According to this version, Heisenberg knew very well what needed to be done in order to build an atomic bomb in such a short time, but he decided to conceal this from the authorities.

How are these incompatible perceptions and presentations of an historical event even possible, coming from otherwise well informed and honest historians? No doubt, the first explanation is that well known facts do not uniquely and compellingly dictate a certain conclusion. There are facts which can be seen as evidence of collaboration with authorities or as evidence of pursuing goals that run counter to the interests of the national-socialist regime. There is a variety of reasons which lead those who investigate these facts to give them more or less weight or to give different interpretations to the same evidence. In this way, we can understand not only the opposing verdicts formulated by those who analysed the Heisenberg case, but also the oscillation of judgements of the same person. Thus, Robert Jungk, who first proposed the active resistance thesis in his book published in 1956, claimed later on that he let himself be persuaded by a false belief and, therefore, contributed to the creation of a myth. In contrast, Samuel Goudsmit, who in his book *Alsos*, published in London in 1947, severely judged Heisenberg’s behaviour from a moral point of view, wrote the following shortly before his death in 1978: “Heisenberg was a great physicist, a profound thinker and a noble and brave man. He was one of the greatest physicists of our time and he had suffered a lot from the unjustified attacks of fanatic colleagues. In my opinion, we must consider him, in some regards, as a victim of the Nazi regime”.²² My suggestion is that opposing evaluations like these, as well as oscillations between them, are consequences of the implicit presupposition that resistance excludes collaboration and *vice versa*. The fact of not opposing the project of building an atomic weapon in Nazi Germany seems to be the result of both technical and scientifically erroneous assessments and the total lack of desire to do so on the part of Heisenberg’s group. Both the lack of desire and the trust of authorities in the loyalty of scientists were indispensable for abandoning the project. If he had not produced evidence of his collaboration with the regime, Heisenberg would not have been so convincing when he argued, in the summer of 1942, that the project of building the weapon would be just as labour-intensive and costly as it would be uncertain to achieve success in such a short time.

Can the incompatible conclusions formulated in recent historical writings about Heisenberg’s behaviour as a scientist with much responsibility in the final period of the Third Reich be explained in terms that some people supposedly want to find out the actual truth and others to hide it? I do not think so. It seems much more reasonable to me to admit that the authors of these writings have focused either on the compromises implied by an institutional position assumed in a regime such as Hitler’s, or on the emphasis of the type of resistance which is possible only by the

very acceptance of such a position. Once Heisenberg decided not to immigrate from Nazi Germany he had to choose between abdicating the responsibilities he felt he had towards the scientific community and the German people, and accepting those compromises that represented the inevitable price to be paid in order to influence the decisions of the national-socialist authorities.

A comparison, although unsatisfactory in many ways, could help us to balance our evaluation of the behaviour of some Romanian elites during the first phase of the communist regime. Romanian writer and philosopher Lucian Blaga knowingly accepted being completely sidelined from the very beginning of the communist regime. He paid for his democratic political convictions and his refusal to collaborate in any way with the authorities of a ruthless repressive system, not only by making huge personal sacrifices, but also by consenting to seeing his work pushed out of the public arena. Blaga did not accept any transaction that would have implied a critical distancing from his philosophical and artistic creed and did not give in to any temptation, unlike numerous other prominent personalities of Romanian culture at the time. Ever more concerned that his name and work would gather dust, that not only his philosophy, but also his literary works could become absolutely inaccessible to the younger generation, he published, in the last two years of his life, a few articles containing positive appreciations of some of the regime’s accomplishments. Here are the words of a person whom Blaga trusted to whom he explained the reasons for his decision less than one year before his death, in September 1960: “Poems have started to be printed, but a volume not. He wants to see his volumes published because time flies, he grows old and soon he will be forgotten. His conviction is that the regime will last long, most likely past his life [sic]”.²³ We can certainly regret such concessions; even condemn them if we take the easy stance of hindsight. Blaga made the respective concessions in a period when the system was getting stronger and we have to judge his decision by taking into account all its consequences in the situation at the time.

Heisenberg’s case is particularly instructive for the very reason that it prompts us to circumspection, to a dubitative attitude that favours taking into consideration the complexity of situations in which personalities with great responsibilities find themselves, in contexts where there is no alternative capable of providing full satisfaction both to the requirements of oneself as a moral subject, and to the community. Their responsibilities are commensurate with their recognition and the prestige they enjoy. No matter how comfortable, black-and-white judgements – heroism versus moral abdication – do not seem appropriate in such cases. As a commentator of Frayn’s play remarks, the risk exists that the characters of historical writing may receive clearer delineations than historical documents and sources allow us to make.²⁴ For those who are so unlucky as to live in an oppressive dictatorial regime it seems there are only two choices: resistance or collaboration. Heisenberg’s case shows us that you can have collaboration and resistance mixed in one. It thus becomes clear how under certain circumstances the very acceptance of collaboration

²³ Dorli Blaga, Ion Balu, *Blaga surveilled by the Security*, Cluj, Apostrof Collection, p. 165.

²⁴ See Klaus Hentschel, *Endlich einmal historische Polyphonie*, in M. Frayn, *Kopenhagen*, pp. 177-181.

²² Quote after M. Frayn, *Nachwort*, in *Kopenhagen*, p. 109.

makes resistance possible.

English translation by Ileana BARBU and Alina CÂRÂC

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Morality in Politics, or the Politics of Morality? "Neo-Purification" in Romania¹

Mihaela MIROIU

"Morals mean the rules of a good coexistence. Without them, the coexistence is not just bad, but impossible". (Norberto Bobbio)

Introduction

My contribution to this volume will address the problem of retributive justice under post-communism. What happens when the principle of proportional responsibility becomes meaningless and "convenient truth" gives birth to a "convenient justice"? What is the proper relationship between ethical culpability, legal responsibility and politics in a free society? In order to reach the answers from the perspective of ethics applied in politics, I will focus on the problem of transitional justice and lustration in Eastern Europe as well as on a specific case-study of the politicization of morality in the Romanian context.

After the collapse of communism (1989), the problem of moral and political guilt in communism has not been at all popular. Just small groups, mostly former political prisoners, a few dissidents, some public intellectuals and people who wanted to reclaim property were looking for reparatory and restitutive justice (from Latin: *restitutio*: to give back). The wider public had other agendas in a world of dramatic changes to identities, jobs, the social environment, and the dissolution of institutions and habits as well as the creation of new ones (see also Linz and Stepan, 1996). The most curious fact is that the problem of moral "purification", of lustration, and reparatory and retributive justice became important as far as the media was concerned, 17 years after the official death of communism. It became obvious for the public that in order to get rid of the traumatic past, we have to bury it, to conduct proper funerals, but what do we bury when we know very little about the past? To join Europe also meant cleaning up the dirt of the past, in order to morally and/or politically cure society of its impurities. I do not write about "impure people" here, but about the necessary distance from our moral failures as human beings during the communist regime. I will argue how the main result of the "cleansing" meant not more morality in politics, but the politicization of morality.

¹ The paper, which has a first version as a public talk at Indiana University is revisited for publication under the framework of the Project "Civil Society and the State. Analyzing Public Debates on Gender and Environmental Issues in Post-Communist Romania", CNCSIS - Idei, PN-II-ID-PCE-2011-3. I am very grateful to my friends, Maria Bucur, Jeffrey Isaac and Ivona Heding (Indiana University) for their comments.

A comprehensive view of the sins, sinners and supervisors

Communism meant the unification between politics and morals: from an official point of view, communism employed a unique morality, valid for both private and public life (written in *The Code of Socialist Ethic and Equity, of Communists Life and Work*). It is in the nature of the regime to control every human being, to restrain freedom, to leave very little room for privacy. It is in the nature of the regime to treat people as non-fully-rational, unable to judge their own interests, to project their own good, even in the details of their personal life including: what to think, what to learn, how much to eat, whom should one marry or befriend, where to work and live, how many children to have.² Once you deviate or worse from the official Party line, you are erecting your own interests above the “People’s”; you become morally dubious if not politically dangerous.

It was hard to survive by respecting legality and morality. The greater the constraints, the greater are the sins; thus, the greater is the need for trusting supervisors and guardians to keep each individual under surveillance, control, and to punish the sinners. We are always supposed to remember that the official ideology has promised the terrestrial, social paradise and every sin against the official line matters on earth, not in the afterlife. From this point of view, we can easily recognize a totalitarian regime as distinct from an authoritarian one: the intrusion into personal life and the fundamentalist relationship between the moral, legal and political are necessary conditions.

In the 1970’s and 1980’s Romanian communism was totalitarian, not simply authoritarian, as were other East European communisms (see Verdery, 1996, and Tismaneanu, 2003, 2011). Survival was possible by lying, living in duplicity and complicity (See Kligman, 1998 and Cioflâncă, Jinga, 2011). The number of the Securitate officers and of informers was triple that of other communist countries. It was so easy to become a sinner, a criminal, or a coward. It was hard to be a hero and, certainly, one had little chance to be simply a normal and reasonable person, according to the common standards of a free country. The absolute power to name the sins and make the rules belonged to the upper echelons of the Communist Party. The power to control and correct the sinners belonged to the second and third level activists (those paid for) and to the Securitate (as political police). The informers were recruited mostly from among the sinners through blackmail, those tempted by access to a better job or professional position, other resources (even a passport) or, why not, the envious. This is the main reason people hate the informers the most, even if the main responsibility for these decisions belonged to the Party and the Securitate: informers hid behind facades of what seemed like average colleagues,

2 See also other books and articles I have published on the topic: *România. Starea de fapt (Romania. Matter of Facts)*, Nemira, Bucharest, 1997 (co-authored with V. Pasti and Cornel Codita)); *Societatea Retro (The Backward-Looking Society)*, Trei Pub. House, Bucharest, 1999; *Drumul către autonomie. Teorii politice feministe (The Road to Autonomy. Feminist Political Theories)*, Polirom, Iasi, 2004; “Vicious Circle of the Anonymity”, *Thinking*, Montclair, USA, no. 1, 1994; “Ana’s Land. The Right to be Sacrificed”, in *Ana’s Land*, Westview Press Publications, Boulder, Colorado, 1996; “Post-Totalitarian Pre-Feminism”, in *Romania since 1989. Politics, Economics and Society*, Henry F. Carey (ed.), Lexington Books, Maryland, 2004 (with Liliana Popescu).

friends, teachers, students, relatives, neighbours, boy/girlfriends, or spouses.

Morality in politics: A matter of principles

Moral relativism for democracy, moral absolutism for tyranny

Motto: Doina Cornea: *The truth is not pure because we are not pure: The truth always corresponds to what is real. The ultimate reality is The Being. Our impurity is progressively degrading truths.*

A Securitate officer: *There is no absolute truth, simply convenient truth.*³

Stable democracies are very comfortable in admitting an amount of relativism, individual interests (consonant with the idea of the rational actor), and a perspectival approach to truth. Democracies recognize the legitimacy of individual interests and the conventional character of lay ethics applied in professions, public life and politics. Politicians themselves have had to admit that democracy is built from and depends on public trust (see Tronto, 1993, Shapiro, 2003, Sandel, 2005, Mendus, 2009). They have to respect some moral commands in politics in order to maintain their public position as in: do not use the citizens as a means for your own ends. Ask for their informed consent; refrain from giving false promises or, if you did not, the consequences of your political actions have to have an impressive utility for the larger public in order to ask for forgiveness and to be accepted as a moral politician according to utilitarian criteria.⁴

As readers will have noticed in the *motto*, perceptions regarding moral values are different in non-democratic regimes than in democratic ones. On one hand we have the most courageous dissident of the 1980s, Doinea Cornea⁵. She adopted an absolutist perspective on morals, a metaphysical point of view on truth. For her the truth is one and pure, but our impure behaviour is progressively degrading this truth. Being a woman, her approach and ideas became rather a subject of mockery in a public space over-saturated with misogyny and sexism.⁶

The Securitate officer on the other hand, appears to have a view which is closer to a relativist and democratic one: *there is no absolute truth, but convenient truths*. Both perspectives are very relevant for today’s public discussions around the moral, legal and political responsibility for the wrongness and crimes of the communist regime.

Maybe it is difficult for us to understand the moral dichotomies in a totalitarian

3 Doina Cornea, March 2, 2005 and with Securitate officer X, February 23, 2005 (Interviewed by Camelia Simeoni upon my request).

4 See the whole modern tradition from Kant and Mill to Rawls and Dworkin.

5 Doina Cornea is the author of 31 public protests; she has lectured on Radio Free Europe and contributed to other 160 Manifestos. She was interrogated and arrested many times and submitted to home arrest until December, 1989.

6 Even nowadays the *Global Gender Gap Report* (2011) is showing Romania in the 112 position in the world in terms of women’s participation and representation in politics (see <http://www.uis.unesco.org/Library/Documents/global-gender-gap-report-education-2011/> Nov. 20: 2012).

regime. But people had to confront two kinds of absolutisms: one of the unique party, which has decided that there is just one morality, valuable for all kinds of roles from parent to worker or member of the party; for all kinds of institutions from family to the state; for the private, as well as for the public sphere. It was a morality of duty and obedience, rather than individual rights and responsibilities. It has created a ritual of duplicity for most women and men, as well as of complicity for many of them. How can one oppose the wrongs of such a regime by embracing a relativist perspective on morals? In order to be morally pure in a democratic regime, we can be just responsible and reasonable citizens. In a tyrannical regime one has to be a hero or a saint.

I will not discuss in this paper the first stage of communism, the proletarian dictatorship (1948-1964), even though most political crimes were related to this period. The reasons for not doing so consist in the fact that most of its protagonists are not alive anymore or they are no longer in a position of power. I prefer to limit my discussion to the so called “Ceausescu era” (1965-1989) because most of the protagonists of that period are alive and active, some of them still in power and many at the heart of the new capitalist class (See Pasti, 2006). Political prisons were closed by state decree in 1964. “Class enemies” (members of the former political parties, the bourgeoisie, wealthy peasants and traders, public intellectuals, stubborn priests), had already disappeared from any political power or significant social influence.

After 1971 disobedience or protest meant important and various risks, from the supreme, but very real risks such as death,⁷ imprisonment and prosecution of one’s family, to severe but also real risks: loss of one’s job, isolation, house arrest, privation and exile, to ‘soft’, very common ones such as restrictions against travel abroad, interdictions against certain professional jobs (e.g. in order to teach social sciences you had to be a party member) or interdictions against professional advancement.

Radical disobedience meant opposition against the regime itself and attracted both supreme and severe risks. In this case one had to be hero or saint, not just a responsible citizen. I wonder if one can, in fact, speak about citizenship in communism, having a similar meaning as we are used to in democratic regimes. A few such dissidents are heroes, but they have never been publicly recognized as such. I shall give some of the most important names of these heroes: Gheorghe Ursu, Doina Cornea, Vasile Paraschiv, Radu Filipescu, Gabriel Andreescu, Mircea Dinescu, Paul Goma, Dan Petrescu, Dorin Tudoran, Petre Mihai Bacanu, Anton Uncu. The readers should not be surprised by the lack of recognition. It is hard to recognize a hero, especially when the hero is of the same generation as you and is still alive and active. Most people would feel cowardly and others guilty if they were to recognize such heroes. For the first group it is not morally comfortable while for the second it is even dangerous. The consequence is that we, the others, need not be either moral and political heroes, or criminals.

⁷ See e.g. Gheorghe Ursu who was beaten to death.

The paradoxes of ‘the truth’ about communism

Question: *Where is the truth about our faults under communism, and who will ‘reveal’ it to us?*

The political answer: *The truth is written by the political police in our personal files and they will ‘reveal’ (disclose) it to us.*

If we are adopting the correspondence theory of truth, a statement is true if and only if we can find proof that the content of our statements have a correspondent in reality. For example, the main supposition is that if we want to know who were guilty for the wrongs of the communist regime it is not necessary to ask the victims and the witnesses, or to consult the institutions archives, but the Securitate files. This statement is built on the assumption that someone has impartially and accurately described what we have done in our past in these files. The main image about the Securitate is that it was not an institution like any other, but rather the treasurer and the guardian of the Truth. In my opinion, this, in fact, has been the main victory of the political police over the history of communism. The defenders of the activity of the commission in charge of the investigations of the Securitate files will argue that the commission is not taking the findings literally, but is making the necessary correlations with other files in order to prove the verity of the information. We are now in a full vicious circle. The data cannot be confronted with proofs other than the informative notes.

Paradoxically, only the ‘products’ of the political police have credibility nowadays. In Foucault’s terms (*Discipline and Punish - Surveiller et Punir*, 1975), they have created the new official “regime of truth”.

Lustration⁸ as a form of transitional justice

After the fall of the various communist regimes (1989-1991), the term lustration came to refer to the vetting of public officials in Eastern Europe for links to the Communist-era security services; it means the policy of limiting participation of former communists, and especially informants of the communist secret police, in the successor governments or even in civil service positions. In my opinion, one of the most relevant studies for the topic I am dealing with is *Explaining Lustration in Eastern Europe: ‘A Post-communist politics approach’* (Williams, Szczerbiak, Fowler, 2003).⁹ The authors are stressing the “tuff” (legally based lustration) and the

⁸ The original etymological meaning is associated with ancient Roman rites of purification.

⁹ The study of Williams Kieran, Aleks Szczerbiak, Brigid Fowler, *Explaining Lustration in Eastern Europe: A Post-communist Politics Approach*, SEI Working Paper No 62, (2003) has many analytical virtues and is very appropriate as a basis for ethical reflections on lustration. They have incorporated many important studies concerning transitional justice in post-communism such as Samuel Huntington, *The Third Wave: Democratization in the Late Twentieth Century*, 1991; Neil J. Kritz, (ed.), *Transitional Justice: How Emerging Democracies Reckon with Former Regimes*, 1995; Aviezer Tucker, *Paranoids May be Persecuted: Post-totalitarian, Retroactive ‘Justice’*, *Archives Européennes de Sociologie*, 40 (1999); Adrienne M. Quill, *To Prosecute or Not to Prosecute: Problems Encountered in the Prosecution of Former Communist Officials in Germany, Czechoslovakia, and the*

“mild” (morally based lustration) as we shall see later.

One characteristic of a democratic regime is that it has no propensity to institutionalise the whole of social morality into legislation and thus should be tolerant towards victimless crimes. Transitional justice, from a totalitarian or authoritarian regime to a democratic one is a very hard and unusual task. Apart from the other forms (procedural, retributive and distributive justice), transitional justice has to be reparatory for different kinds of victims. Usually transitional justice includes criminal prosecution of prominent or representative officials, the restitution of confiscated property to its legitimate owners; the declassification of the secret files and public access to their contents (see McAdams (ed.) 1997; Kommers, 1997; Williams et al., 2003).

Lustration ascertains whether an occupant of, or candidate for a particular post worked for or collaborated with the Communist Securitate (read also STASI, KGB and so on). *Decommunization* refers to the wider removal and exclusion of people from office for having been paid as activists of the Communist Party. The process consists of two kinds of measures: (1) vetting or screening individuals for their association with nomenklatura (read the apparatchik and the political police officers); or, (2) their exclusion from political and public leadership positions. The former Czechoslovakia had the most severe law since 1991: “automatic exclusion from the specified offices”. Originally, the law was to be in effect for five years, then until 2000, and finally a ban for life Hungary (1994). “Lustration rests on public exposure with discreet pressure placed on individuals to resign if they are found to have been agents”; (Poland 1997). Poland projected the extension of the exclusion even to the executive positions in private companies, as well as cutting the retirement benefits for secret service officers (see Williams et al., 2003).

In Romania the civil movement for lustration started in March, 1990 under the name *The Timisoara Proclamation (Proclamatia de la Timisoara* (article 8) and it became the main purpose of the month-long sit-in protest at the marathon meeting of *Piața Universității (University Square)* in Bucharest. The protesters called for banning access to political positions for two electoral cycles for those who were activists of the Communist Party and the members of the Securitate. The movement was not at all popular. Seventy seven per cent of the population rejected the idea by voting for a formerly important apparatchik, Ion Iliescu, as President. The early demand for lustration in Romania was consistent with Huntington’s prediction (1991):

“If the last leaders of the non-democratic regime will resist violently in face of regime change, there would be strong will for retribution. If they will quit

Czech Republic, 1996; Charles Bertschi, ‘*Lustration and the Transition to Democracy: The Cases of Poland and Bulgaria*’, 1995; John P. Moran, ‘*The Communist Torturers of Eastern Europe: Prosecute and Punish or Forgive and Forget?*’, 1994; Juan J. Linz and Alfred Stepan, *Problems of Democratic Transition and Consolidation: Southern Europe, South America and Post-Communist Europe*, 1996; Kieran Williams and Dennis Deletant, *Security Intelligence Services in New Democracies: The Czech Republic, Slovakia and Romania*, 2001 and many other studies which are relevant from a legal, moral and political point of view.

peacefully, or will initiate the post-communism and the necessary reforms then quit, persecution would be avoided”. (Huntington, 1991, p. 211)

Huntington believed that Romania and East Germany will have the tendency to prosecute communist leaders, while the rest would forgive and forget (see Williams et al., 2001). The prophecy failed. Once the alarm started, the ‘targets’ of retributive justice had the means to manipulate and divert the whole revolution and to exploit the new fears resulting from the transition process. People were confronted with the loss of their working places in a large scale de-industrialization process as well as with what they experienced as a deep social polarization. In such circumstances it was easy for the former nomenklatura to occupy, openly or discreetly, the media and the political spectrum. Their weak political competitors¹⁰ were deeply oriented towards a restitutive justice, a political agenda which was far from most people’s concerns and interests (Miroiu, 1999).

The predicted lustration and decommunization disappeared from most parties’ political agenda, as well as from public interest. This diminishment was facilitated by the diversion machinery which worked very efficiently to disclose the files of some respected writers who were informers of Securitate. I agree with some of the perspectives concerning the process of lustration and decommunization, which state that they were dependent on the dynamics of post-communist political competition.

“We find that the passage of a lustration bill depended on the ability of its most ardent advocates to persuade a heterogeneous plurality of legislators that the safeguarding of democracy [was] required. The question of how to deal with [a] previous non-democratic regime’s functionaries and collaborators has been an important source of political divisions in post-Communist Eastern Europe [...]. Attitudes to the past developed into an issue on which parties cooperate and compete”. (Williams K., A. Szczerbiak, B. Fowler, 2003, p. 3)

Welsh’s view on early or late pursuit of transitional justice has a strong anchor in the actual process: as time passed, communism and the political police “became a tool in the struggle for political power” and was exploited by some politicians against their opponents” (Welsh, 1996, p. 93). The analysts of the politics of lustration conclude that within the political spectrum the right was in the favour of a “tuff” (legal) lustration and the left, in contrast accepted a mild (moral) one to the extent they accepted any.

“The passage of each lustration bill, and the sanctions contained therein, reflected not the country’s political history but rather the parliamentary arithmetic of fluid party systems The story of lustration, therefore, is one of post-Communist political competition and legislative coalition-building,

¹⁰ The National Liberal Party and National Christian Democrat Peasants Party were restored very soon after December, 1989, sharing a golden-age, idealist nostalgia for pre-communist times and a less idealistic concern to regain lost properties that had been confiscated by the communists in 1948 .

and should be told with emphasis on the rhetoric, moves and compromises that competition and coalitions require". (Williams K., A. Szczerbiak, B. Fowler, 2003p. 12)

To paraphrase Thomas Nagel's title, *The mor(t)al questions* remained on the agenda of a powerless minority. Who are the guilty who are responsible for our daily fears and insecurity? Who was spying on our private lives? What kind of punishment do they deserve? Do they deserve a moral or a political punishment? Can we use exile or banishment, the same for all of them irrespective of their individual histories? If we are promoting liberal democracy and the rule of law, how are we supposed to treat those who are accused of victimless crimes, just because they have signed a commitment to the Securitate?

"Lustration was, therefore, presented as a means of safeguarding the state and democracy either by compelling thousands of candidates and officials to disclose their personal histories, or by installing a discreet bureaucratic procedure to filter such people out of the state sector". (Williams K., A. Szczerbiak, B. Fowler, 2003, p. 9)

If the legal and moral process was delayed, as in our case, some of the predictions of the pro-lustration partisans concerning the risks of not legislating it are already realized.

- a. State capture: avoiding lustration as a prophylactic means will lead to the privatization of the common goods by the party barons and secret police operatives;
- b. Blackmail: the fear about the continuous influence of the secret police by the uncontrolled use of the files: the informers are vulnerable and will be subject to blackmail by the officers (some retired, others still active) to act against the public interest;
- c. The dubious character of the political institutions: public transparency about communism will increase confidence in the newly democratic institutions and in the protection of the citizens' rights (see also Williams et al., 2003, pp. 9-11).

These speculative side effects are meaningless in post-communist Romania, where no lustration law has been passed. Even if the projected lustration law will pass (which I doubt, 22 years after 1989), the consequences of the state capture remain. The political and economic elite do not fear lustration, but rather the creation of the National Agency to Fight Corruption (Agenția Națională Anticorupție: ANI) initiated by Monica Macovei,¹¹ the former Minister of Justice (Jan. 2005 - April, 2007). ANI was supposed to play an important role in the necessary clarifications

¹¹ She was appointed by the Democrat Party and by the President Traian Băsescu as a prominent representative of civil society dealing with human rights (Helsinki Committee, Bucharest).

concerning the sources of politicians' wealth, as well as preventing and fighting corruption. With the help of the Parliament, the project became void of meaning and the government got rid of Monica Macovei.¹² Lustration as an elite-driven process was not very popular and had little public support. People's memories appear to be very short. In order to be sensitive to the past injustices and align oneself with the idea of a retributive justice which would punish those who are guilty, one has to live in society with a high level of awareness of justice in the present. Moral sensitivity to the wrongness of the past cannot function in a proper manner within a survival society subject to deep polarization and insecurity. The proportion of the social and economic victims of the spontaneous transition significantly exceeds the proportion of the perceived victims of communism (according to the *Report of the Presidential Commission for the Study of Communism*, between 500,000 and 2 million). For example, a national opinion poll in October, 2006 (a few months before the Presidential Commission's Report) found that just six per cent of the people considered themselves direct victims of communism.¹³

The politics of morality

Oblivion and forgiveness

In general terms, the governments of a 'post' authoritarian era prefer the politics of oblivion and forgiving to the politics of remembering, restoring or disclosing the actual past. Usually they are using the past in political conflicts in order to destroy their enemies or competitors. The recent cases are impressive. Once, we hoped that after the elections in 2004 the relations with the past would be clarified, yet the past was used to destroy internal competitors in the National Liberal Party and to switch the agenda from anti-corruption politics to a false retributive justice. But this will be a later subject. From a political point of view, oblivion is more advantageous than remembering (see Forty and Küchler, 2001).

Apparently those responsible for crimes and abuses "benefit from a general, tacit unasked *de facto* amnesty"[...]. Implemented, under the pressure of civil society, the "Ticu Dumitrescu Law" (Law no. 187/ December 9, 1999), granting access to the files of the Securitate as political police, proved to be inefficient in the intended 'moral purification' of post-communist society" (Cioflâncă, 2002, p. 88). The National Council for the Study of the Securitate Files is also a partial failure. The strongest arguments for oblivion are related to the repression or diversion of inconvenient, embarrassing memories.

What are the general explanations of the social preference for oblivion?¹⁴

- a. The socialisation of most people in communist ideology, politics and institutions. One cannot expect a quick and general brain-wash, a

¹² Later on, ANI also became a political tool to get rid of dangerous political competitors.

¹³ Barometrul de Opinie Publica al Fundatiei Soros Romania, Octombrie 2006, București. Similar perceptions were found in other polls: Atitudini și opinii despre regimul comunist din România Sondaj de opinie public, ICCMER, Septembrie, 2010.

¹⁴ See also Coflinca's interpretations, 2002.

replacement of collectivist thinking conditioned by duties and the long experience of paternalist political habits, with an individualist thinking, oriented to rights and the need for personal autonomy;

- b. The nostalgia for communism of many people. Communism also meant the protective role of the state, stability, job security and the leading position of the working class. Even the psychological fact that many people were young and they are nostalgic for their youth is important as is the fact that present problems are far more pressing than past ones;
- c. Generalized responsibility and guilt feelings. Communism created a large scale membership for its organizations: from the age of five until death, any person living in Romania belonged to the Homeland Falcons; the Pioneers or Communist Youth; the Communist Party or the Democracy and Unity Socialist Front. The forced interpretation is that everybody was 'guilty' by the formal appurtenance as "collaborationist", yet no one was to blame;
- d. The direct interests of the politicians to impede decommunization and lustration (more than 20% of the political class was built by the informal communist networks, uninterested in transparency concerning their communist past. (See also Cioflâncă, 2002 and Scalat, 2004).

The arguments pro oblivion are definitely those which belong to those who are directly interested in oblivion rather than in forgiveness i.e. it is better to forget than forgive.

- a. Lustration and de-communization are subversive: they will jeopardize reconciliation and the unity and solidarity of the people;
- b. Responsibility is collective and institutional, not individual;
- c. The search for the guilty is a witch-hunt (even the authority of the famous dissident Adam Michnick was used to enforce this idea);
- d. There is no clear cut line between 'us' and 'them' (Havel's authority was used as well);
- e. It is not the right moment. We were either too close to communism (early '90's or are too far from it right now);
- f. We cannot consume the little energy left for dealing with the past. Communism is exhausting and had no deadline. The 'post' society is an exhaustive enterprise people have to confront on a daily basis;
- g. We have other priorities and we do not let the past undermine future projects.¹⁵

Some of these arguments are reasonable, understandable and shared by many people, apart from those directly interested in oblivion.

The general, non-partisan arguments for forgiveness are as follows:

- a. Humanist and Christian arguments. Everyone needs a second chance and individuals can be redeemed. We have to forgive. But in order to have a

second chance, others have to know how you used the first. Forgiveness is something different from forgetting. We can convert to other beliefs and can play a significant role in the future (as did St. Paul, the Christians' persecutor);

- b. People tend to act in favour of a prospective responsibility rather than for a retrospective one. What a person did or is supposed to have done in a democratic time under conditions of freedom is more valuable, than her past mistakes under constraints. Is it better to know 'the truth', or just to judge by ourselves if a politician who acted in the public interests in the last years has been 'purified' by his own political acts?

In order to report a regime as illegitimate and criminal from a moral and legal point of view, we need fundamental standards by which to pass judgements. In my view, these standards are, in the end, related to human rights and Kant's first imperative of modern ethics, namely, that every person is an end in herself and should not be treated just as a means.

"Act with reference to every rational being (whether yourself or another) so that it is an end in itself in your maxim [...], meaning the rational being is 'the basis of all maxims of action' and must be as a mere means but as the supreme limiting condition in the use of all means, i.e., as an end at the same time". (Kant, *Groundwork of the Metaphysic of Morals* (1785: 437-438)

From this basic moral axiom we can derive those of political morality. The elementary political conditions for humans to be ends unto themselves are political liberty (to be governed by consent); freedom of speech and assembly; liberty of conscience and freedom of thought; in short, a political environment which encourages personal autonomy. Who was then responsible for transforming citizens into simple means for the party's will? When this question is raised, it starts a sudden avalanche of unwillingness to take responsibility for events a tactic practiced mainly by members of the former nomenklatura and by nationalists. They plead implicitly for tacit amnesty without memory and demand forgiveness. Their arsenal for evading responsibility includes:

- a. A positive deontological vision. Communism was good, but various leaders had corrupted the ideology and the social evolution (Lenin, Stalin, Mao, Ceausescu, Kim Ir Sen, Enver Hodja);
- b. Uni-directional responsibility. The responsible lay with the dictator Ceausescu plus his wife and they were condemned and executed in December, 1998;
- c. Perpetual victimization. Romanians were the perpetual victims of the Iron Curtain, the Cold War, the Soviet Union, the CIA, the West, MOSAD or fate itself. It is, in fact, a convenient fatalist-determinist view of history;
- d. The use of impersonal, anonymous, abstract concepts in naming responsibility (dictatorship, communism, totalitarianism, history, fate, "THEY") (see Cioflâncă, *ibid*);

¹⁵ For details see also Cioflâncă, 2002.

- e. The use of the classical argument of *dirty handed* politics: “raisons d’etat”; state security, national interest (see Walzer, 1973; Johnson, 1993; Buckler, 1994; Coday, 1996).

But how is it possible to forgive without memory?

In Adrian Cioflâncă’s words: “In the Romanian case, amnesty would mean the incineration of past truths instead of placing them front and center. It is difficult to store mysteries or phantoms” (2002, pp. 92-93).

The syndrome: Forget before you forgive

In spite of the Law allowing people free access to their own Securitate files and the ‘de-conspiracy’ of the Securitate as political police (Law Nr. 187/1999)¹⁶ adopted ten years after the fall of communism, for many years we were dealing with a preference for amnesia. Until a decade ago the general public was rarely sensitive to the subject of retributive justice for the wrongs of the past.¹⁷ In Romania’s transition, the pressure for memory and retributive justice was simulated by some NGO’s (The Association of Former Political Prisoners, The Civic Alliance, The Revolutionary Association, and The Group for Social Dialogue) and by parliamentary means (the National Christian Democratic Party and the National Liberal Part, both self-identified as right wing).

As Adrian Cioflâncă shows, in order to forget Romanians have to know what is to be forgotten in a rational manner:

“[...] to know the truths and to store them in an orderly manner. For 16 years there were just sporadic memories which were not politicized as a base for a proper treatment of the former regime. It was a long period of political and public amnesia combined with a tacit amnesty”. (Cioflâncă, 2002, 98)

The case is very different, as Cioflâncă has shown, if we compare to other post-dictatorial regimes. In South Africa amnesty was granted to those who fully confessed. In Latin America the perpetrators and the victims were two well-known and distinct groups. In our case the confessions are almost missing and the competition to be included among the victims¹⁸ was so high that it lost its moral significance.

In Romania, with very few exceptions, the culprits were recognized and politically assumed as such by the President Traian Băsescu only in December, 2006 in the *Final Report of the Presidential Commission for Analysis of the Communist Dictatorship* (December, 2006). The Report concludes that the regime was “illegitimate and criminal”.

¹⁶ In Romanian: Legea privind accesul la propriul dosar și deconspirarea securității ca poliție politică.

¹⁷ See the polls mentioned earlier.

¹⁸ For the details concerning the competition among victims see Mihaela Miroiu, *State Men, Market Women* in the review *Feminismos, Muyer y participation politica*, Universita Alicante, Numero 3, Juno de 2004.

The political gesture of the President belongs to the moral de-communization process, not to lustration and does not involve automatically a lustration law, but rather an exit from the deliberate ignorance (an intentional amnesia) of the public institutions as a minimal and necessary condition for a possible moral amnesty.

Amnesty or moral forgiveness can be expressed as a request and a declaration of *mea culpa* by the people who feel responsible for moral, political or legal crimes related to the communist regime. There were some isolated cases of the ‘soft’ former informers, such as the writer Alexandru Paleologu, or Nicolaie Corneanu, the Bishop of Banat, who confessed and assumed their *culpa*. But most of the others claim the “dirty hands” argument, the separation between morality and politics i.e., the *raison d’etat* (state security) or patriotism.

Public intellectuals as “emergency democrats”, ethical purists, and un/intentional tools of political fights

What is very interesting is that the most prominent public intellectuals belong to the category I call ‘emergency democrats’. By this I mean the kind of public intellectuals who ordinarily reject equal opportunities, are indifferent or reluctant to non-discrimination politics, are anti-feminist and/or anti-minorities’ rights. But when the rule of law and the foundations of democracy are in danger, they intervene through protesting, making public statements and asking for solidarity around the issues of basic rights and liberties.

Sequentially I use two kinds of explanations for their attitude: one is related to the success they have for aesthetic reasons; the public is very well socialised in digesting text-appealing metaphors and are avid for them. The other argument is related to the tradition or lack of, concerning the contractarian ethics of public life in the modern sense (the so called failure of deep modernization). Historically, the conditions for a proper debate on morality in public life and politics were never on the mainstream agenda due to various contextual facts:

1. The secularization and laicization of morals failed because of communism and was imposed in a non-contractarian manner, by the Communist Party decree as single perspective on morality (The Code of Socialist Ethic and Equity).
2. After the fall of communism the Church regained a leading and recognized moral role in society. All significant (though tentative) attempts to introduce lay ethics were merely rejected as “atheist” and “communist” and they are popular only in the narrow circles of academics and human rights NGOs.
3. The main intellectual response to the moral issues was metaphysical, dichotomized and absolutist; no compromises in morals could be entertained. No differences between private and political morality were made.

The main judgements about the relation between morality and politics are not deontologist or consequentialist. They are not to be found in relation to the ethic of rights, of duty, of care, or to virtue ethics. In the book *Beyond Angels and Devils. Ethics in Romanian Politics* (2007) I largely explained the dominant perspectives in the relationship between ideological and moral tendencies in public discourse and

public opinion. Overwhelmingly, the main trends in the public debates belong to the following types:

- a. Machiavellian amorality (politics are all about power and interests, morality is a private issue – vision is shared mainly among politicians);
- b. Moral purity. Politicians are absolute bastards and politics stinks – a view shared by the purist public intellectuals as well as a significant proportion of citizens (20%) according to the majority of the last polls;
- c. Absolutism. Politics and politicians are either very good, or bad, *tertium non datur* – a view also shared by purist public intellectuals as well as a significant proportion of citizens;
- d. Group Manichaeism. *Ours* are good and honest, *theirs* are bad and dishonest (a view shared by political parties and their supporters);
- e. Religious transfer. X is a good Christian, a merciful person, eventually visited by the Saint Spirit, then became a good politician; this is the new tendency concerning a politician who is practicing mass-charity within a clear political populism (11%);
- f. Excessive transfer of virtues from the morality of private life. Politicians have to be good and caring parents for the citizens – strong and soft paternalist-citizens, according to the latest poll equally divided between ‘soft’ and ‘hard’ paternalists.¹⁹

If politicians are marked by an obvious personal interest, pro or against lustration, or in general by the political use of morality, the successful public intellectuals’ approach is marked by essentialism, purism, absolutism and a deeply emotional orientation.

The greatest fame in the public debate on this issue belongs to Gabriel Liiceanu, a Heideggerian philosopher and Director of a very important publishing house in Bucharest: Humanitas. Since 1989, he has launched a well-known *Appeal to Scoundrels* (addressed to members of the nomenklatura and to Securitate officers and informers). His good sense idea was: “Take a leave from the public arena for a while” asking them to quit the front stage of politics and public life. The last sentence of the naïve and utopian *Appeal* was “If you will do it, we will love you!” Liiceanu’s call has had an opposite echo. It has prompted the “scoundrels” to assume a necessary solidarity when faced with a common enemy.

In 2005 President Băsescu ordered that all Securitate files be given to the National Council for the Study of Securitate Files (NCSSF) where they could be actually consulted by the public. In doing so the problem of the morality of the past returned to the political market and was obviously used to destroy some political enemies. Yet, few of them came from the ranks of the nomenklatura or were active Securitate officers; instead, most were informers, many just people who signed a commitment for potential collaboration, but with no evidence of their actual political

police activities. The signature itself was taken as proof of association with the political police. Thirsty for scandal, the mass-media contributed to the breakdown of any reasonable judgements on individual cases. A signature was taken as a proof of collaboration and as evidence for activities with the political police.

In August, 2006 the internal political fight in National Liberal Party (NLP) ordered by the Prime Minister, Călin Popescu Tăriceanu brought to light a new wave of ‘revelations’, just in time to get rid of the competitors. The moment coincided with the collapse of the principle of proportional responsibility in politics, along with the purely political use of the immorality of the communist past. The most famous victim of this political operation was Mona Muscă, the Vice-president of NLP. She was the most popular politician, next to the President in every poll, and a person highly respected by the public and civil society for the laws she promoted concerning public transparency of government activities, NGO financing systems and, last but not least, prominent initiator and promoter of the project of the Law of Lustration and of anti-corruption politics. In addition to her activity as Minister of Culture, she was deeply appreciated for her moral integrity within a corrupt environment.

It is obvious that she was a real danger for her fellow politicians and for dubious business circles. Her hidden (or purportedly insignificant) “original sin” consisted of the fact that 30 years previously she had signed that she would inform the Securitate if her foreign students from Cyprus, Iran and Iraq committed acts of violence against each other, or behaved as a threat to national security. The contract was for one year, after which she moved to Bucharest, and her relationship with the Securitate ended. In her personal file, which Muscă herself made public on the internet after the ‘disclosure’ and her visit to the NCSSF, there is no evidence that she violated any human rights principles or that she hurt another person. Muscă publicly claimed that she did not consider this an act relevant to the activities of the political police, but rather a normal act to secure the students’ personal security. But because she was hunted by her fellow colleagues in the party, the entire *mise-en-scene* influenced a verdict of “political police”. From the very moment of the disclosure, Mona Muscă was subjected to a symbolic lynching by the media. The vanguard inquisitor was Gabriel Liiceanu who functioned as a recognized, public morals authority. He published a letter which ruined her public reputation more than any Securitate file might have. The letter has attracted the explicit backing of most public intellectuals. In order to understand better why such an open letter is significant for the purist and absolutist approach to politics, I shall quote extensively from its contents:

“The Gifted Madam Muscă or On Lying in Ecstasy

In order to write, it is necessary for me to suffer an emotional commotion which makes me excessively mad, so much so, as to enable me to sit down in front of a white page, with the feeling that if I do not do it, I shall suffocate.... After seeing you and listening to you, I said to myself, with that bitterness and desperation of the Romanian soul that went through 40 years of communism, and through the 16 years that came after it: “How much corruption in this human being!” Madam, I shall...explain to you why I believe that there has been nothing, over

¹⁹ The data are according to the national poll on Gender, Political Interests and European Insertion, Mihaela Miroiu, Ana Bulai (Coord.), National School of Political Studies and Public Administration, Bucharest, January, 2007.

these last 16 years, more pathetic than the show that you have offered me.... The entire Securitate, from the lady mopping the floors of the Ministry of Internal Affairs to the Securitate generals, from the person “contacted” without any commitment, but willing to “flirt” with the officer visiting her, to the “employee” with proper documents and a code name (like yourself), from the “worker” inside the country to the person spying from the outside, “for the good of the country”, every single one, contributed to the functioning of the most improved system of repression and fear. All of you made terror possible. You all felt more important, you all had a dirty contract behind our backs and on our shoulders, and you all paid your peace, safety and audacity with our fears, our humiliation and our anxiety.... Do not ask me to distinguish between the lady mopping the floors, you as an informer and General Pleșiță²⁰ who ordered beatings or planned murders. Stop playing that disgusting act....

Doina Cornea said about Iliescu²¹ in 1990 “that he shot a moral bullet into the chests of the Romanian young people”. You didn’t shoot a bullet. You fired a bazooka... You confiscated the entire reserve of morality of the language, the gestures, and the mimicry. And you turned it into dust. By putting on a robe of purity on the largest stage of the country, the political stage, you destroyed both purity and politics.... As of now, thanks to you, Romanians have a weaker soul. And an even greater number of young people shall leave Romania spitting behind them, because of you. But fighting for a law on cleansing, meaning of purification, of cleaning up an impure space, a law that should have started with you?

On December 30, 1989 I wrote a text called Appeal to Scoundrels. Why do you need to contribute, with your moral wretchedness, to nursing our souls back to health? Why do you keep coming, with your foul smelling dowry, to propose bunches of roses to us? Which, because they are held by you, stink. They stink, stink, stink! In fact, this is what you did: you made everything stink for us... just as the other Scoundrels undoubtedly, you shall not resign”.²²

As Gabriel Andreescu, a political scientist and a well-known activist for human and minority rights and former dissident notes, what happened in many notorious cases was not unjust, but simply grotesque.

“The abusive use the documents fabricated by Securitate for the symbolic destruction of some people is an act of injustice. The archives manipulation leads to the distortion of the interpretation of the past,[it] is spreading the confusion over 45 years of communist history, is reversing the logic and the meanings of it and represents a huge and costly collective failure”. (Andreescu, 2013, p. 5)

20 General Pleșiță was one of the most frightening promoter of the political police in Romania.

21 Ion Iliescu was the President of Romania between 1990-1996 and 2001-2004.

22 Gabriel Liiceanu, “Talentata doamna Musca sau despre minciuna in extaz” *Cotidianul*, August, 15, 2006, translation by Miruna Coca-Cozma, September 8th, 2006, published on her personal blog.

The gender asymmetry of his judgement is obvious too. Women are supposed to be primary moral agents, the guardians of morality in politics. One mistake is enough, it does not matter how minor it is, to become infamous and *persona non grata*.²³

Mona Muscă was dismissed from the Liberal Party, the same party which never had a problem keeping Securitate officers and members who acted as political police informers. In March, 2007 she resigned from the Parliament and all other political positions. She was the only one who did. Soon after, when the Prime Minister and the head of the Liberal Party succeeded in getting rid of all of his opponents in the government, he proclaimed that his agenda would focus on securing people’s prosperity. The focus on the past is over. People need silence and stability.

Final comments and conclusions

For a democratic political regime the cardinal sin is the violation of basic rights to life, freedom, property, free association (the deontologist point of view), even the pursuit of happiness (if we want to include a moral criterion of utilitarianism as well).

I do share Michael Waltzer’s view (1973) that the degree of responsibility varies proportionally with the degree of freedom and information. It is simply unjust to consider that from a moral point of view people are absolutely guilty or absolutely innocent. The proportionality principle is valuable irrespective of the normative sphere with which we are dealing.

I also share the idea that when applied to a category of people as a whole, culpability has a moral and political content. The most of the people accepted to belong to these categories. The distinction between crimes with victims and victimless crimes is fundamental for a fair and proportional judgement. Only at the individual level can one can speak about legal responsibility and retributive justice in the legal sense. Otherwise, we will embrace a radical view on responsibility, similar to Jean Paul Sartre’s idea: “in the war there are no innocent victims”. In communism one cannot speak of innocent adults: almost all of us were pioneers, members of the communist youth organization or submitted to the regime by professional means. From a Sartrean point of view one can claim that we all had other alternatives: to emigrate, to protest or to commit suicide. Once we were in the system, we belonged to it, it was our responsibility. Paradoxically, this radical view is perfectly consistent with the interests of the enemies of retributive justice. In fact, at the beginning of this process some of us were rather inclined to a Rawlsian perspective: we are in a new “origo” point of our own history. How can we build, then, a just society from the *original position*,²⁴ in which everyone decides principles of justice from behind a *veil of ignorance*? This “veil” is one that essentially blinds people to all facts about themselves that might cloud the notion of justice that is developed. No one knew her/his place in the new society. In a way, it was the right moment to choose

23 The same kind of judgment was applied in the case of corruption. Women were punished immediately by the parties, media and the public.

24 See John Rawls ideas on the conditions of justice as formulated in *A Theory of Justice*, 1971.

the principles of justice. This was our illusion, after the fall of communism: to start from a real, not a hypothetical original position. But not all of us accepted the veil of ignorance or the 'veil' concerning our personal, selfish interests. Some had rejected the veil because they were victims, others because they are responsible for the past injustice and for the present politics of redistributing wealth and truth.

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Moralization and Conformism in Social Practices: The Case of a Post-communist Society

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Introduction

We propose to tackle in this paper the importance of the concept of moralization with respect to the quotidian life in general and to the social impact of the political transformations enacted in Romania in the last two decades. Our approach is enabled by the phenomenological method, applied to social sciences, which takes into account primarily the subjective point of view of the actor. We will abide, therefore, by the Schutzian principle to “go back to the ‘forgotten man’ of the social sciences, to the actor in the social world whose doing and feeling lie at the bottom of the whole system”.¹ The elements of sociological phenomenology handed down by the phenomenological tradition and able to enlighten the concept of moralization are: the life-world (*Lebenswelt*), fidelity (*Treue*) and normativity (*Normativität*). At the same time, in view of the particularity of moralization as both a subjective and a social practice, we will propose a dialogical approach between a theoretical (phenomenological) and a practical point of view. The latter is delineated by examples from the legal and socio-political fields, specific to the Romanian post-communist societal evolution. Therefore, we will approach firstly *the relationship between normativity and life*, which gives us an indication of the special place that moralization occupies as a matter of research: between *theoria* and *praxis*. Secondly, *the particular philosophical makeover of the concept of moralization* will be studied shortly so as to give substance to its claims regarding the transformation of individual and collective social life. The third section will analyse *different forms of moral, political and cultural conformism* which represent a hollow form of moralization. Finally, we will proceed with *two examples chosen from the Romanian legal and social spheres of life* in order to show that moralization, in spite of important drawbacks, is really at work in the Romanian post-communist society.

Moralization: Between normativity and life

One possible way towards the “life of norms” is opened by the phenomenological concept of the quotidian world. The latter is described through its “regularity” or “routine”, but also and equally essential as *effort* – which takes many forms: an effort to adapt oneself to the diversified normative environment (moral, ethical, legal, etc.), to a variety of more or less rigid constraints, and mutually to adapt this

¹ Cf. Alfred Schütz, *The Social World and the Theory of Social Action* in *Collected Papers II. Studies in Social Theory*, edited by A. Brodersen, Martinus Nijhoff Publishers, Dordrecht, The Netherlands, 1976.

environment to the subject's different needs. In the space opened up between the self and the other, in their respective play of intentionalities, becomes manifest a power of transformation, an original "I can", who, as a general inchoative force, is oriented towards the self and the (external) world and its structures.

Therefore, the concept of normativity should be approached not from the perspective of the representations about the world, from a theoretical perspective, but from the point of view of action, of *praxis* in general. The analysis of the relationship of norms with their practical contexts of implementation² reveals the fact that not only the quotidian world develops a variety of types of normativity, insufficiently reflected upon, but also that there is a circularity which allows for the transformation, through different modes of action, of the context itself; the latter contributes to the uncovering of a constitutive power that Husserl called, controversially, "the transcendental I".³ With this special form of transcendentalism which goes through the "subjective" field of phenomena – a series of singular apparitions dependent on the constitutive and formative power of a "subject", Husserl indicates a possible connection between *theoria* and *praxis*: this phenomenological overhaul designates a special way of articulating the regulations pertaining to knowledge and its afferent necessities ensuing from a particular form or style of life. This articulation stands out against the background of the immanent (pre-predicative) sphere of "consciousness" (of the subject) and ultimately situates the source of normativity in the domain of the vital, life-imbued operations (*Leistungen*) of the conscious subject.

Therefore, the fact that life and living always seem to exceed the normativity expressed in the existing regulations and implementations represents an evidence for phenomenology and it contradicts the (transcendental?) appearance that the actual norms, through their power of objectivation, "regulate" life, forcing its orientation and preoccupation with what is transcendently and imperatively (pre-)given. The nature of this excessive, constitutive power of life, amply discussed by Husserl's disciples,⁴ demands a double approach – genealogical and thematically

oriented towards the quotidian life – in order that its particular structures and general significance can be clarified.

The concept of *Lebenswelt* (life-world) was employed by Husserl starting with his analyses developed in the course of the second decade of the 20th century and colligated in the second volume of *Ideas II*.⁵ It was once more approached by Husserl within the period of his redacting *Krisis*⁶ in the 1930s, without, however, succeeding in completely clarifying its significant content. It's clear, nevertheless, that "life" – one component of the concept "life-world" – does not designate either a biological sense, or a creative spontaneity or some form of variability. The term "world" – the second part of the expression forged by Husserl – has a strong idealist and transcendental hue which might imply for certain critics, such as Bruce Bégout for example, that "the life-world is the unique product of the transcendental subjectivity".⁷ Consequently, for Bégout, the Husserlian approach, by staking itself exclusively on the activity of the *ego* as a unique source for the constitution of the world, seems to be "incomplete".⁸ "It is not in rapport with the constitutive subject [...] that the pre-given world and its allegedly absolute certainty are relativized" – adds the French author – but the life-world is "in a more fundamental way, the result of a socio-transcendental *sense formation* which exceeds once and for all any subjective constitution and stems from an anonymous, collective construction of the quotidian world".⁹ Certainly, the life-world is not the product – in a constitutive sense – of a subjective sense-giving. Nevertheless, this does not mean that the transcendental subjectivity would be cut off from any form of life, especially from the quotidian life. Equally important is to not isolate it in the sphere of theoretical acts. Consequently, the life-world is the result of a sense formation with a prominently practical and normative character. It is a concept that must be understood primarily as a "world".

The relationship between normativity and "the subject of life" is not a contingent fact and it certainly should not be conceived on the strength of a rapport of force: namely, the force of objective norms upon the obedient, passive subject. From a practical point of view, the question is thus the following: how can a differentiation and a kind of mastery¹⁰ be inserted in an already constituted typical form of normativity so as to open up a space for moralization and ethical living and thinking? The introduction of this moral dimension initiates a dynamic which is not the dynamic of the natural, objective world, but one which makes room for the practical invention

2 Cf. Marc Maesschalck, *Normes et contextes. Les fondements d'une pragmatique contextuelle*, Georg Olms Verlag, Hildesheim, Zürich, New-York, 2001. Declaring itself to be a "work of ethical epistemology", this book emphasises the fact that contexts have a particular normativity: the norms are not simply absorbed by them, but, on the contrary, they react to the constitutive background of contexts. In this view, contexts are "forms of life" which are shaped by the productivity of norms, without being completely transformed by them. Consequently, contexts circumvent, in different degrees, the normative hold of norms.

3 Cf. Jean-Francois Lavigne, *Husserl et la naissance de la phénoménologie (1900-1913). Des Recherches logiques aux Ideen: la genèse de l'idéalisme transcendantal phénoménologique*, Presses Universitaires de France, Paris, 2005.

4 See for example, Alfred Schutz, *On Phenomenology and Social Relations. Selected Writings*, edited by Helmut R. Wagner, The University of Chicago Press, Chicago and London, 1970; Maurice Merleau-Ponty, *Signes*, Les Éditions Gallimard, Paris, 1960; Jan Patocka, *Le monde naturel et le mouvement de l'existence humaine*, Phaenomenologica 110, Kluwer Academic Publishers, Dordrecht, 2003; Max Scheler, *Problems of a Sociology of Knowledge*, translated by Manfred S. Frings, Routledge & Kegan Paul, London, 1980;

Bernhard Waldenfels, "Normalité et normativité". *Entre phénoménologie et structuralisme*, in *Revue de métaphysique et morale*, nr. 45, 2005/1, pp. 57-67.

5 Cf. Edmund Husserl, *Ideen zur einer reinen Phänomenologie und phänomenologischen Philosophie*. Zweites Buch: Phänomenologische Untersuchungen zur Konstitution, herausgegeben von Marly Biemel, Martinus Nijhoff, The Hague, 1952.

6 Cf. Edmund Husserl, *Die Krisis der europäischen Wissenschaften und die transzendente Phänomenologie*. Eine Einleitung in die phänomenologische Philosophie, herausgegeben von Walter Biemel, Martinus Nijhoff, The Hague, 1976.

7 Cf. Bruce Bégout, *La Découverte du quotidien*, Alia, Paris, 2005, p. 267.

8 Ibid.

9 Ibid. It is our translation from French to English.

10 Maesschalck speaks of a "reflexive differentiation" (*op. cit.*, p. 5).

to emerge: the habits lose their neutrality, positivity and their solidarity with an objectivistic epistemology – in the sense of Maesschalck,¹¹ and become a *modus operandi* that combines the orientation of a conduct with the moral auto-evaluation of the subject.

The concept of moralization

Which is the philosophical package of the concept of moralization? In the first instance, moralization means the process of internalization of certain moral norms, of specific requirements, obligations and courses of action by which the individual is bound or restricted. The passive aspect of internalization is constituted by the pre-reflexive, acquisitive power of the habit imposed by the normative form of the particular life of the subject. The second component, the reflexive active one, presupposes the appropriation or the re-appropriation of norms: either one adheres to a new norm, which re-shapes the situation from a certain field; or one reviews and questions the passivity or the passive spontaneity of an old adhesion.

Edmund Husserl proposes the psychological-moral concept of fidelity towards oneself¹² in the sense in which a subject accomplishes repeated acts of rational reflection on the goals of his actions. This repetitive reflexive activity is needed because the subject's natural background (instincts, habits, sediments of the past, drives, etc. – the anonymous life of the subject) might urge him to deviate from the construction of a spiritual personality transparent to himself. A subject who is faithful to himself strives for gaining an ideal coherence of his own life and is aware that his rational decisions engage completely his responsibility for becoming a human person. Therefore, he aims for an understanding of the sense of his own life through an ongoing auto-meditation (*Selbstbesinnung*). The subjective, reflexive unity of life produced consciously by the will of rational auto-determination of the subject comes into conflict with the passive will of his naïve life, which stems from his instinctual drives and passive affectivity. The latter comprise his originary predispositions whose force is manifest in the imposition of a specific, passive life-project upon the subject. The re-appropriation of this natural background of the personality within the teleological movement of a reflexively coherent project implies a lucid, wide-awake reflection on the subject's personal *data* (biography,

memories, convictions, decisions, character, habits, etc.) and on the way they blend together in his global life-project.

But a too strong fidelity towards oneself (conformism) or the lack thereof (irresponsibility), lead, dramatically or simply naively, to losing oneself. Husserl describes an intentional form of responsibility – the ego-responsibility – where normativity appears as an internal process of moralization: a subjective decision to follow a certain course of life which is coherent and completely justifiable by way of reason. The starting point of this form of moralization is the auto-apprehension of the self as the spiritual ego of all his acts, wherein the sense of his past and future life is constituted. Therefore, in Husserl's view, the building of the personal self in reflection represents the kernel of the construction of a responsible humanity (*Humanität*). If the individual does not take responsibility for his own life-project, then any (social or community) norm falls outside his lucid decision of appropriation and misses its target. Moralization is not efficient when the individual mobilisation towards ego-responsibility is lacking. The norm alone does not possess the necessary force to initiate this kind of auto-mobilisation and, consequently, for Husserl only a personal decision may trigger the process of rational appropriation of norms in the context of moralization, of developing a rational and responsible life-project. And the decision itself seems to be forced out by the double “face” of the constitution of the subject – physis-psychological and spiritual – by his participation to two kinds of reality, which each imposes upon him their own determinations and demands. Consequently for Husserl to act morally (fidelity towards oneself) or to act immorally (to lose oneself) represent two possible outcomes for the human life.

The process of moralization enables a difficult and demanding way of being faithful, steadfast and loyal to oneself in the course of an action or in relation with a form of social organization, where the other person and his moral quibbles become equally important.¹³ On the strength of the sedimentation of the normative injunctions at the level of (passive or active) consciousness, the basic technique of moralization is memory. The second concept of moralization, stemming from Nietzsche's theories,¹⁴ entails a process of construction of the memory of the individual's obligations towards himself and the community. The memory of what we owe in general (to ourselves and to others) represents a form of moral mobilisation against forgetfulness; it is the ordinary digestive organ of our quotidian life, which is characterized by the different strength of our engagements, by the celerity of our renouncement and by the justifications of our indifference. The historicity of moralization emphasises, therefore, the function of memory and its capacity to bind almost blindly a subject to a set of norms imposed by a certain community life. What is specific for this form of moralization is the emphasis

11 Idem, p. 108. In underlining, with Bourdieu, the temporal dimension of habitus (in the sense of the anticipating temporality of the practical sphere which does not entail a strategic calculus, but a judgment in relation with a style of life), Maesschalck states “la présentification du pouvoir-être objectif conçue comme transformation modalisante du rapport au monde” (*op. cit.*, p. 110).

12 Cf. Edmund Husserl, *Psychologie phénoménologique (1925-1928)*, Paris, Vrin, 2001 (traduit de l'allemand par Philippe Cabestan, Natalie Depraz et Antonino Mazzu), p. 201: *En dernière instance, la vie égoïque est traversée par une aspiration à parvenir à une unité et à une unanimité dans la multiplicité de ses convictions, de telle sorte que le moi veut devenir un moi tel qu'il reste fidèle à lui-même, ou tel qu'il peut rester fidèle à lui-même, pour autant qu'il n'est plus jamais enclin à abandonner ses convictions et – cela va de pair de façon essentielle – à se perdre lui-même. Il s'agit naturellement d'une idée, mais elle caractérise le sens de l'aspiration à la conservation de soi dans l'idéalité.*

13 See for example, Joona Taipale, *Twofold Normality: Husserl and the Normative Relevance of Primordial Constitution*, Husserl Studies, Kluwer Academic Publishers, printed in the Netherlands nr. 28, 2012, pp. 49-60, where it is emphasized the tension between two dimensions of normativity (primordial and intersubjective) which are not easily resolved in Husserl's work.

14 Cf. Friedrich Nietzsche, *The Genealogy of Morals*, translated by Horace Barnett Samuel, New York: Courier Dover Publications, 2003.

bestowed on the obligations towards the other, which must be taken into account seriously prior to any concerns about the personal construction of the individual. The memory is thus trained in order to not forget the constant presence of the other within the practical horizon of the quotidian life, together with all the demands and obligations that such a foreign presence entails. Consequently, the process of moralization originates in the principle of non-indifference towards the other.

In the social sphere of life, moralization induces two ways of not being indifferent, of living together with the others: first, the *coordination* of the behaviour according to purely exterior prescriptions which hold true for the field of activity in question; secondly, *cooperation*, namely, the participation in the normative activities which are not based on technical arguments but rather involve the communitarian dimension of “being together with the other”. To contribute to the normative activity does not only mean to propose norms which meet the conditions of my own relationship with the community, together with all the significations that this inter-relationship connotes with regard to my own personal life-history, but to really engage myself in constructing, through the proposed norms, an environment, an intersubjective ambiance favourable to the others’ subjective relationships with the community. In this way, the norms are built from within the community, through the mobilisation of a genuine interest for the other and through the battle for creating an understanding between the singular and the collective.

If not, both the lack of norms which organize clearly and in a just manner a certain field of the social life (professional or other), and the eschewing from a minimum participation of individuals to the formation of a normative regime, generate de-moralization, resistance against the firm force of static, sometimes un-liveable norms and rules. In contemporary society, especially in the European Union, present-day life is the result of an inter-reign, of a semi-void between two types of organization of normative systems: those of the singular, national states and those of the European community, which must be made to suit one another or, if this solution proves to be impossible or too costly, must be re-invented from scratch. Identifying those substantial sources and resources of the social life which could sustain the relevance of a certain norm is essential, so that the respective normative system does not become existentially false and damaging.¹⁵ Social and political anthropological studies¹⁶ underline the importance of the vital-force of a norm, which contributes, as mediator, to the creation of an order of things and of actions

15 For the importance of the concept of relevance in the social theory, see Alfred Schütz, *Reflections on the Problem of Relevance*, Richard Zaner (ed.), Yale University Press, New Haven, 1970.

16 See for example, Alfred Schütz, *Some Equivocations in the Notion of Responsibility*, in *Collected Papers II. Studies in Social Theory*, edited by A. Brodersen, Martinus Nijhoff Publishers, Dordrecht, The Netherlands, 1976; Peter L. Berger and Thomas Luckmann, *The Social Construction of Reality*, Penguin Books, London, 1991; Scott, J. F., *Internalization of Norms: A Sociological Theory of Moral Commitment*, Prentice Hall, New Jersey, 1971; Hechter, M. and K.-D. Opp, *Social Norms*, Russel Sage Foundation, New York, 2001; Bicchieri, C., *The Grammar of Society: the Nature and Dynamics of Social Norms*, Cambridge University Press, New York, 2006; Alexander, J.M., *The Structural Evolution of Morality*, Cambridge University Press, Cambridge, 2007.

that intends them in such a way that it facilitates the stance of the individual among them. Any norm generates a course of action which affirms and enhances the life of the individual and the community, or in the case of vitiated norms (vested interests, malign intent, ignorance), produces more harm than good. A life lived in a state of maximum availability, without any desire to engage in a life-project which could devise a certain coherent configuration shaped at least minimally by certain norms, tilts dramatically towards a miserable void. De-moralization means that the general indifference towards norms leads inevitably to the indifference towards his/her own life-project. This situation represents the decadent outcome of the neglect of the Kantian philosophical warning, according to which man’s liberty needs a moral norm in order to exercise itself as such: the indifference towards norms is in fact carelessness towards his/her own life, lived completely in the natural reign and at the absolute mercy of the moment’s impulse.

Moralization in the civil code

We will analyse, in this section, a particular practice from the legal sphere of life in order to emphasise the importance of moralization. This illustration is relevant because it stems from a normally strictly normative field where the active subjects are socially charged with a strong force of auto-mobilisation: the civil law.

The liberty to engage in various social acts, on your own or together with the others, is warranted, preserved and defended by civil law. This contractual mobility must respect certain limits and exigencies codified in the civil code, but the fundamental principle of the civil legal sphere is the liberty to enter contractual relationships with the others. In the case of a breach of the obligations freely undertaken by the contracting parts, their responsibility is activated according to their respective legal transgressions. Therefore, the Romanian Civil Code¹⁷ defends expressively the wronged contracting part by binding the guilty one to make an admission of liability and the remedies settlement envisages precisely the re-institution of the equality, on the grounds of equity, between the contracting parts concerned.

What happens, however, if the one responsible for the damages caused is, in fact, a third party, from outside the contract, such as in the case of the responsibility for defective products, implemented at the level of the European Union?¹⁸ In this particular situation, the weight of liability rests not only with the sellers that commercialised the defective product causing damage to the buyer or consumer, but, through a procedure of joint-responsibility, with the producer who made and put the defective product on the market. How is this possible considering that the producer is not a contracting part of the commercial contract within the conditions stipulated

17 Cf. art. 1349-1350, art. 1376., the Romanian Civil Code, 2011.

18 Cf. *The Product Liability Directive*, formally Council Directive 85/374/EEC of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products, under which any producer of a defective movable must make good the damage caused to the physical well-being or property of individuals.

by the Civil Code? Should it be the case that the rules provided by the civil sphere lose their force of regulation and implementation when a contractual situation falls at the same time under the stipulations of another legal sphere, namely the consumer code? Does the binding force of the contract disappear if a third party, outside the contract, is liable according to various and fluctuating legal classifications?

The intent of the legislative authority was primarily to allow the victims to seek a proper and equitable redress for the damages to their health, safety and property, induced by the defective products; but it also intended to prevent such damages from happening by creating a regulatory framework whereby the producers are obliged to improve their products. The European Directive aims, therefore, for a fair apportionment of the risks inherent in modern production.

The principle of the liberty to enter contractual relationships gains in this way an undeniable moral dimension: the liberty to bind oneself through contracts is “moralized” by the principle of non-indifference towards the other. This moralizing hue imposes the exigency that not only the contracting parts, but also the third party, outside the contract, who has a stake in the material object of the contract should not cause product-related damages to the others. It is an extension of civil responsibility, in its specific, contractual sense, towards an outside-the-contract third party, on the basis of moral reasoning. The inter-codification of the concrete situation does not make for a form of positivist legal inflationism, but rather claims and recognizes the necessity to abide by a moral principle.

After 1989, in Romania, different social acts were accomplished under the stipulations of a general legal practice which incited different forms of mobilisation (contractual or otherwise), supported generously by the liberty to enter contractual relationships fully warranted by Romanian norms. After the integration into the European Union and in the wake of the implementation of its directives, “the mobilisation towards mobility” is tinged with “the mobilisation towards moralization”, with the exigency, backed by law, to take the other into account and to accomplish a practical and moral exercise of non-indifference towards the other. To take heed of the other as a legislator, or as a mere social subject introduces a dimension of verticalization of social practice, of amplifying its claims and stakes so as to comprise the moral sphere of life.

The pitfalls of the moral and political conformism

An important part of the present-day political and cultural thinking¹⁹ is polarized thematically by the problem of otherness, of the other as a difference, by the

problem of the emancipation of minorities (ethnic/territorial or extra-territorial, sexual, *les sans-papiers*, etc.), by the claims raised by the principles of distributive social justice based on the idea of equal opportunities for everyone and on the awareness of the cultural differences of the political/social agent. To summon the topic of difference, in all its various forms, represents a commonplace strategy for the current political and cultural debates. It is, therefore, advisable to identify those sore spots where the discourse about difference loses validity; or, when valid, it does not exercise an impelling critical force in the social, cultural and political sphere of life, but only acknowledges the *status quo*. In the latter case, the discourse on difference represents nothing more than a form of conformism to the given social, political and cultural structures of the world. There is also a conformism to a way of thinking about the political debunked by postmodernism, which claims that the conceptual categories that are meant to explain the principles of political action indicate, in fact, a deleterious ossification, against which new forms of resistance must be invented. Conformism is the danger subsequent to the effort to impose and legitimise difference *per se*.

a) Political conformism

The current political and social situation in Romania is shaped by the fact that the country went through a 50 year period of communism, and the post-communist society inherits communist social nomenclature and structures which withstand social and political reforms and transformations. Françoise Thom in her book *Les fins du communisme*²⁰ shows that “*la fronde conformiste*” of the intelligentsia functioned as an illusion of a political differentiation within society and delayed the fall of the communist totalitarian state. The intelligentsia claimed to take up the role of civil society, which was non-existent in communism, but in reality they had a false independence in rapport with the communist regime. In post-communist society, the change of the communist ideology with the principles of democracy does not fully warrant the escape from the clutches of political conformism: its very nature represents not merely an ideological category, but an ethical one.

b) The ethical conformism of the outcasts

After the fall of communism, the democratic overhaul of society and liberal capitalism gained the consensus of political thinkers: they became the benchmarks of the construction of the new state. The forms of resistance are, therefore, pushed back into the particular sphere of the outcasts: the unemployed, the have-nots, *les sans-papier*, the immigrants, foreigners, Aids patients, and so on. The German philosopher Günther Anders analyses the reformative potential of the outcasts’ opposition to the existent, social-political order according to a moral perspective. The risk to which they expose themselves – Anders calls the outcasts by a generic term: “the metaphysical unemployed” – consists in feeling the need to subject themselves to authority, to attach themselves to a fixed world²¹ more strongly than

19 See for example, Mark Currie, *Difference (The New Critical Idiom)*, Routledge, London and New York, 2004; Rudi Visker, *The Inhuman Condition: Looking for Difference after Levinas and Heidegger*, *Phaenomenologica* 175, Kluwer Academic Publishers, New York, Boston, Dordrecht, London, Moscow, 2004; Iris Marion Young, *Justice and the Politics of Difference*, Princeton University Press, New Jersey, 2011; Todd May, *Reconsidering Difference: Nancy, Derrida, Levinas, and Deleuze*, Pennsylvania State University, 1997; Allan W. Norrie, *Dialectic and Difference: Dialectical Critical Realism and the Grounds of Justice*, Routledge, Abingdon, 2009; Jeffrey A. Bell, *The Problem of Difference: Phenomenology and Poststructuralism*, University of Toronto Press, Toronto, 1998.

20 Cf. Françoise Thom, *Les fins du communisme*, Criterion, Paris, 1994.

21 For Anders, the outcasts loiter between “inter-worlds” because they are rejected by the technical-political apparatus of democracy: cf. Günther Anders, *Mensch ohne Welt*.

to grab the possibility they have to force a reformation of the social and political devices and structures that reject them. Therefore, the outcasts long to be integrated and accepted by the world, to participate in, and to be a part of, the social-political order which turns them away. Consequently, they develop a special form of pathology – the pathology of fixity – as though they were not able to see themselves except as a part of the order that excludes them. Anders designates this will of conformism as ethical cowardice.

c) The conformism of the cultural pluralism

The same philosopher, Günther Anders, develops a critique of cultural pluralism, but in contradistinction to the habitual critiques which consider it to be a form of nihilism (historicist or axiological),²² Anders sees here rather another example of conformism. Pluralism means to have a certain attitude towards the world which is characterized by the recognition, as such, of different conceptions about the world and of the equal value of the cultural items and goods through which they are incarnate. The recognition operates on the basis of an acceptance in the sense of “*Sowohl-als-auch*”. It is a cultural conformism which proceeds to the never-ending integration of diverse cultural items and goods within the infinite space of consumer practices. Pluralism’s flaw does not consist in nihilistic destruction: if all the conceptions about the world have the same value, then they have none. On the contrary, its blind spot designates the passive acceptance of the difference which passes easily and automatically as valid and charged with value within the cultural system. Consequently, a real confrontation between the different conceptions about the world does not take place nor a real recognition of them as such. It is the age of cultural promiscuity, of the conformism to a false pluralism.

As soon as the differences lack the possibility to validate themselves by exterior instances of legitimation – either within the theoretical framework of various gnoseological constructions which de-essentialize them in order to establish the principle of equality as the only claim for a legitimate and legitimating essence; or within the framework of the quotidian life (profession, family, groups of subjects, the ecstatic entertainment of leisure, etc.) where differences do not appear anymore to the alert, fully awake attention of the subjects, but are simply brushed off with an indifferent acceptance – conformism comes to the forefront of social, political and cultural life and can only be challenged by an educated effort to take into account the particular contents of the differences in order to fully understand them and ultimately to appreciate their important input. The comprehensive grasp of these differences, which saves them from the sphere of automatic indifference where they normally land, requires the development of a social-political culture; this would allow for the negotiation of a vertical²³ (normative) arrangement of differences,

according to their value and importance. The horizontal arrangement of differences deprives them of their potential effects in the order of reality because they lose themselves amongst the other differences already in place or laying claim to a place of their own. Therefore, compared with the multiple pre-given differences, the new differences seem just another set of the same, old differences to rapidly acknowledge without interest. How to negotiate, to communicate in order to obtain the recognition of the distinction of a difference in rapport with others, describing the effort to make a difference stand out and to validate its distinctiveness constitutes the research theme of the contemporary sociologies.²⁴ Nevertheless, the current sociologies approach the subject matter of differences from a highly objective point of view: they are interested in the dynamic of objective societal systems, wherein the concrete individual and his practical behaviour (professional or otherwise) does not escape the force of suction of the society’s macro-structures and remains a pure abstraction.²⁵ To approach instead the constitution and validation of differences from the point of view of the differentiating practices themselves, as they are conducted by “flesh and blood” individuals and to evaluate their actual normative capacity, demands a major overhaul of the concept of normativity, understood in the sense of what people should be (normative ontology), or as what people should do (ethics, professional deontology). The source of normativity, sought from the bottom upwards, and from within the life-world, transforms the language categories which are meant to explain it: in contradistinction to the previous models of codification registered in the last two decades, today a new type of conceptual vocabulary is developing with a strong emphasis on personalization and co-involvement of the addressee in the respective codification.²⁶ The creation of normativity, its vital source and its beneficial effects might be considered as a form of social individuation of the person (professional, statistical, communal, differential, etc.) who is not isolated and completely autonomous from the social environment; on the contrary, she tends to enrich her social relationships, sometimes successfully, through discreet or ample interventions, to transform the various unequal configurations of the social world according to the moral principles of reciprocity and equity.

Consequently, the new active approach of differences based on the principle of equality, which prevents them from being lazily absorbed in the social, cultural,

uncontrollable intervention of the political in the social sphere; on the contrary, it is a verticality imposed by the principle of morality, intrinsic to the social practice.

24 See for example, Axel Honneth, *The Struggle for Recognition. The Moral Grammar of Social Conflicts*, translated by Joel Anderson, The MIT Press, Cambridge, Massachusetts, 1995, and especially Axel Honneth, *Disrespect. The Normative Foundations of Critical Theory*, Polity Press, Malden, 2007.

25 This is the critique that phenomenology usually directs against the exclusively objective treatment of social phenomena: see for example, Alfred Schutz, *The Social World and the Theory of Social Action in Collected Papers II. Studies in Social Theory*, edited by A. Brodersen, Martinus Nijhoff Publishers, Dordrecht, The Netherlands, 1976.

26 See for example, Alfred Schutz, *The Stranger in Collected Papers II. Studies in Social Theory*, edited by A. Brodersen, Martinus Nijhoff Publishers, Dordrecht, The Netherlands, 1976; Alfred Schütz, *Reflections on the Problem of Relevance*, op. cit.; Harry G. Frankfurt, *The Importance of What We Care About*, Cambridge University Press, 1988.

Schriften zur Kunst und Literatur, München, Verlag C. H. Beck, 1984, p. XI.

22 See for example, Maria Baghramian, *Relativism*, Routledge, London and New York, 2004; Aron Gurwitsch, *On Contemporary Nihilism*, in *The Review of Politics*, Vol. 7, No. 2, 1945, pp. 170-198.

23 This vertical arrangement is not the product of a vertical subsumation of concrete differences under “essential differences” because this would entail once again the

moral or political conformism, and the recognition of their contribution to the field of normativity demands, in the long run, a re-thinking of normativity as a practice of regulation, open to the differentiating and particular manifestations of life, which continuously challenge the inclination towards closure and ossification specific to any system. From the point of view of the life-world, any normative system will appear, eventually, stuck, frozen in an obsolete situation. Notwithstanding, the mordant warnings of Nietzsche should not be forgotten regarding the diminution of the quality of life when its vital vigour is sucked dry by intense and perversely codified forms of organization (either in a moral Nietzschean sense, or in the largest sense of bombarding, invading and conquering the quotidian life with the symbols and practices of consumerism, of a galloping, difficult urbanism, or of the omnipresent geopolitical tactics).²⁷ The research apparatus might use, besides the Nietzschean method of suspicion, other approaches: lucid and revelatory phenomenological descriptions, rigorous vivisections of the moral dilemmas which surface when the collision between the individual or collective life and the blunt or vitiated norm result in their reciprocal aggravation. The aim is to recapture and investigate, through cautious exploration, the fluid and fresh representations about a certain form of life and its current practices, in all their differentiation and differences, in order to unmask, enrich or simply confirm the accuracy of the static, fixed representations, dispersed through the present by tradition, in order to grasp and explain the genesis and the instauration of lived normativity.²⁸

From “mobilisation” to “moralization”: A social approach to moralization

The theme of professional conduct in Romania, had not received sufficient research attention, either theoretical or practical – until recently – and had not registered prominently as a source of interest for the Romanian professional community at large. Moreover, the standards of professional conduct were not, as a matter of fact, codified by specific regulations, so they did not change in time, and allowed for practices from the communist period to perpetuate themselves, albeit in different forms, and for flawed, or plainly wrong, forms of management to easily gain precedence in professional life. On the other hand, in a totalitarian regime, where the total mobilisation of individuals was the main preoccupation, the consistent development of a moral dimension within professional activity was ideologically and practically very difficult: in reality, no one dared to publicly embrace principles,

27 See for example, Jean Baudrillard, *The Consumer Society: Myths and Structures*, translated by Chris Turner, Sage, London, England, 1998; Jean Baudrillard, “*Simulacra and Simulation*”, translated by Sheila Faria Glaser, University of Michigan Press, Michigan, 2004.

28 It is a transposition of the Husserlian method of “inquiring back into” (*Rückfragen*) to the field of normativity: as the evidences of the life-world are absconded beneath the scientific veil of idealisations and formulations and the special method of regressive inquiry is therefore needed to debunk them, a step back from their “objective” manifestation is required in order to grasp their subjective source of meaning; this applies as well to normativity.

moral values, ethical norms and rules which were not part of the ideological makeover of the communist state. The idea of individual responsibility for his own professional activity was, therefore, badly damaged. After the fall of the communist party as the “moral”, strategic centre of the Romanian society, the idea of collective responsibility came equally into disrepute.

In the context of preparations for the integration of Romania into the European Union and of the growing public debate about the morality of public persons, the institutionalisation of deontological codes in 2005 represented, without doubt, a return to the ideal of morality to public and professional life. The path towards “moralization” was, therefore, underway. However, the moral conduct in professions was merely described in a general fashion by the deontological codes which each profession had to adopt. This sketchy treatment proved to be highly insufficient for properly challenging professionals to reflect thoroughly on the moral conduct required in the exercise of their profession. To embed explicitly the moral principles of a democratic and pluralist society within the exigencies of each profession, in the routine of daily working, to disclose and to debate the principles and values around which each profession crystallized itself, to start certain new processes of regulating and codifying professional behaviours, which have to comply with efficiency standards and equally with the need to strengthen the moral consensus – these represent the key elements of the democratic transformation of Romanian society and are the legitimate themes for research conducted with the purpose of encouraging and enhancing the innovation and development of an institutional social life.

In order to step out of the impasse created by the opposition between theory and practices – where theory functions in a field within which practices are “vertically” homogenised – an adequate method for neutralising this opposition consists in developing a dialogical approach. The task of the latter envisages, not a correct description of “reality” – which implies that there already is a reality to be described – but finding a way to cope with the pluralisation of personal convictions and beliefs, with the fragmentation of the social and political modes of structuration, with the transformation of the types of social action and governance, a way, finally, to manage the continuous interaction between global and local dynamics.

The dialogical approach enables a double cultural transformation of the role of the “theorist” and of the “professional” respectively. In trying to theorize the field of practice, the theorist is pushed to reverse the relationship between representation and action in favour of the latter and to actually “adhere” to the practices that he wishes to engage with theoretically, to involve himself with them in a way which is very different from that of the detached spectator; when aware of the complexity of the professional life, the professional can no longer be a mere “blind executant”, oblivious to the potential consequences of his acts, which may be dangerous for himself and others. Therefore, it is necessary to take into account the idea of a praxis, that the dialogue renders as transparent as possible and which emphasises its reflexive dimension, the idea of a (moral and juridical) normativity which, not basing itself anymore on fictions, tears apart the veil of a false naturality and contributes to the redefinition of the logos and of the reason embedded in public, as well as professional, life. For that matter, with the “horizontal” structuration

of practices, the relation between these two changes and their differences become vaguer.²⁹

After 1989, Romanian society followed what Francis Fukuyama called, rather hastily and controversially, the apparently sole global course towards a liberal democracy.³⁰ Beyond the spectacular change of the political regime, another ongoing transformation was visible: the mode of functioning of the state and, perhaps, even of its nature. Today, the problems raised by the concrete, political practices are much more important than the liberal doctrine *per se*; especially noteworthy are the problems related to the activity of governing certain populations which in time became more heterogeneous (either through the recognition or the resurgence of old distinctions, most often ethnic or religious, or through the emergence of new distinctions, usually cultural). The contemporary state cannot afford to proceed to a homogenisation of populations, as happened previously with the modern (national) state. Consequently, political action cannot be structured after the model “command and control”, as was the case for previous homogenised, mass societies. In a plural society, where massification no longer entails the construction (on symbolic bases) of large human groups, but rather a kind of generalized and apparently chaotic individualism, the social auto- and co-regulation processes tend to prevail and to replace political action in its traditional sense. Correspondingly, the already ancient forms of authority, based on collectivist values (for example patriotism) are in decline, and individualist values, such as happiness and “the good life”, seem to have taken their place. These problems pertaining to governance in the “age of globalisation” are essentially practical problems, in contradistinction to the old types of political action which transferred them to the realm of philosophy as problems of legitimacy.

Yet the ongoing process of modernization which has been engaging Romanian society for the last two decades is unexplained from a theoretical point of view. Modernization presupposes important, overall structural changes. And it should also tackle topical changes in the cultural norms which have a considerable impact on collective social action and on social stability; these norms have to cope with the crises of the mechanisms of centralized application and execution of laws and regulations, mechanisms that represent the hallmark of the modern national state and that are focused more on the conservation of the social order and less on the recognition of social creativity. In Romania, the new social landscape tends to bypass the passé and strongly ideological fantasies in favour of the inchoative and still vague version of a liberal society and democratic governance. The state is less dependent on a messianic form (religious or secular) and is more characterized by argumentative structures based on contract and reciprocity. Therefore, the state is conceived less as “the saviour of the nation” and envisaged more as a mean of realizing individual goals which gained legitimacy against the traditional,

collectivistic goals of the past.

Democratic accomplishments cannot be considered definitive acquisitions, especially in the case of “peripheral” societies, and the overall democratic process cannot be taken for granted. The reason for this precaution is justified by the fact that apparently irreconcilable conflicts started to surface from within the confrontation of pluralist visions, once the desire for recognition, the need to stand out was allowed to unleash itself and to manifest itself today in an uncensored, even brutal, form. Re-entering history does not mean anymore the appropriation of a legitimating narrative, as in the 19th century, but a symbolic construction which holds in its centre the principle of legality – the rule of law – social justice and individual morality.

With the proliferation of civil and political rights, the state as subject to the rule of law is redefined so as to not fulfil exclusively a political demand (in its ancient, traditional sense of “command and control”). A space for debate and moral confrontation, for new ways of forming the moral consensus opens up with this new conception of the state – this is the new complex situation described by the term “moralization”. It presupposes not only to leave behind the old social mechanics of “mobilisation”, but also to take into account the new forms of subjectivation of social requirements, the new mechanisms of responsibility and auto-responsibility that are in play in the social world. However, the “positivism” which taints the constitution and the functioning of professional organizations and practices and which forces them into subordination and conformity, is not simply swept away by these new changes. To expose its new faces and theoretical premises should constitute one of the new tasks of a philosophy of practice.³¹ Reflection on the concept of moralization emphasised the dynamic relationship between the individual and the norms which shape, in their own right, the relationship of the individual with the social environment and with his consociates. But equally important is to not overlook the pitfalls of conformism, in all its forms – moral, political, cultural – when it pervades the practices of normative validation of the (subjective and objective) differences which are necessary in order to build a social order as flexible as the concrete exigencies of social life.

Conclusions

The individualization of the moral agent through the process of socio-political differentiation may produce beneficial effects from the point of view of multiplying the forms of legitimation. However, from the perspective of the efficiency pertaining to the reformation of the socio-political order, conformism signals a false legitimation of differences and represents a danger of stagnation. A new approach demands that these matters should be understood primarily as *practical* problems and only subsidiarily as problems regarding the political/ideological legitimation of differences.

The social practices, as the practical sphere in which the individual conducts his life, need at least a minimal form of normativity, elaborated together with

29 For the last decades, a reconfiguration of practices in the developed societies (usually considered to belong to some autonomous sphere) has been taking place and, consequently, their regulation (moral or legal) needs to be scrutinized anew.

30 Cf. Francis Fukuyama, *The End of History and the Last Man*, The Free Press, Maxwell Macmillan, New York, 1992.

31 See for example, Theodore R. Schatzki, Karin Knorr Cetina, and Eike von Savigny (eds.), *The Practice Turn in Contemporary Theory*, Routledge, London and New York, 2001.

consociates, within communication practices dedicated to the reinvigoration of the obsolete body of laws or to the invention of a new package of normative parameters. Otherwise, through the lack of serious reflection on the *status quo*, or through the indifferent acceptance of the regulations as they are or as they come about, there emerges different forms of conformism which clash with the real social, political, cultural needs of the individuals. Therefore, the mobilisation of the members of a community of life to undergo the difficult process of moralization (individually and together respectively) appears to be a salutary solution. In this sense, a phenomenology of normativity cannot be reduced to the determination of its essence and to the description of its particular structures: the subjects capable of moralization, of reflexive responsibility and normative creation must be studied by phenomenological psychology, and the constitutive relationships between the subjects must be addressed by a phenomenological social ethics. The phenomenology of normativity does not have a neutral object of study; on the contrary it is already loaded with the practical, cultural, and ethical significations constituted by human beings in the course of their life.

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Political Ethics in the War on Terror: Ethics of the International Crime of Aggression and Political Violence

Andreea GAE

The war on terror is commonly characterized as a fundamentally different kind of armed conflict from the point of view of more traditional warfare. Furthermore, both military and political analysts have argued that the new war policy must involve totally different principles, rules and, consequently, particular applied ethics criteria. Under these circumstances, the purpose of this paper is to explore the ethical issues associated with the *practices* of the “war on terrorism” that was declared following the events of 9/11, e.g. torture, assassination, targeted killing – which identify the enemies’ combatant status as an exception to traditional norms of ethics, proportional justice and just war theory. Therefore, the ethical boundaries of counter-terrorist operations, as indicated in the statement “ethical considerations are central to decisions involving discretion, force and due process that require people to make enlightened moral judgments”,¹ will not address the issue of whether terrorism can ever be morally justified,² though they consider the problem of the morally justifiable constraints and restrictions that a government should be permitted to impose on its citizens in order to succeed in the war on terrorism. Ultimately, the conclusion is that there is nothing inherently moral in the taxonomy of different exceptionalisms derived from the new political violence, because the question may be whether condoning violations of human rights and liberal principles in conducting an international war on terrorism, also risks undermining respect for fundamental laws that destroys commitment to justice and ethics.

The just war and the war on terror: Law enforcement or self-defence?

Presenting two sets of criteria³ which establish *jus ad bellum* (the right to go to war) and *jus in bello* (the right conduct within war), the just war theory consists of a doctrine of military ethics which holds that a violent conflict ought to meet several

- 1 Joycelyn M. Pollock, *Ethical Dilemmas and Decisions in Criminal Justice*, Cengage Learning, Wadsworth, 2010, p. 7.
- 2 See, for example: J. Angelo Corlett, *Terrorism: A Philosophical Analysis*, Springer Publishing, New York, 2003; R.G. Frey, C.W. Morris, *Violence, Terrorism and Justice*, Cambridge University Press, New York, 1991; Virginia Held, “Terrorism, rights, and political goals”, *Ibid.*, pp. 59-85; Jan Narveson, “Terrorism and Morality”, *Ibid.*, pp. 116-169; Uwe Steinhoff, *On The Ethics of War and Terrorism*, Oxford University Press, Oxford, 2007.
- 3 F. James Childress, 1978. “Just-War Theories: The Bases, Interrelations, Priorities, and Functions of Their Criteria”, *Theological Studies* 39, pp. 427-445.

reasonable and necessary elements. Firstly, the *jus ad bellum* advances just cause, comparative justice, competent authority, right intention, probability of success, last resort and macro-proportionality of the anticipated benefits. Secondly, the *jus in bello* brings forward distinctions between enemy combatants and non-combatants, proportionality between civilian injuries and military advantage, military necessity, fair treatment of prisoners of war and no means *malum in se*.

On the contrary, the war on terrorism's strategy involves plans and operations often characterized as warfare rather than law and enforcement because it incorporates elements of a conventional war but with significant differences including purpose, definite duration, object, methods and multiple definitions of terrorism itself.

The academic Paul Wilkinson focuses on the political nature of the war on terror suggesting that:

"Terrorism is the systematic use of coercive intimidation, usually to service political ends. It is used to create and exploit a climate of fear among a wider target group than the immediate victims of the violence, and to publicize a cause, as well as to coerce a target to acceding to the terrorists' claims".⁴

By contrast, the United Nations Security Council in Resolution 1566 of October, 2004 stipulates a criminal perspective without mentioning explicitly its political objectives:

"[...] criminal acts, including those against civilians, committed with the intent to cause death or serious bodily injury, or taking of hostages, with the purpose to provoke a state of terror in the general public or in a group of persons or particular persons, intimidate a population or compel a government or an international organization to do or to abstain from doing any act, which constitutes offenses within the scope of and as defined in the international conventions and protocols relating to terrorism, are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature, and calls upon all States to prevent such acts and, if not prevented, to ensure that such acts are punished by penalties consistent with their grave nature; [...]"⁵

For the United Kingdom, the Terrorism Act of 2000 defines terrorism as use of a threat or action designed to intimidate or influence the public and government for advancing a political, religious or ideological cause, introducing serious violence and damage against life, property and safety.⁶ As for the United States, the U.S. Code Title 22, Section 2656, introduces a specific notion of *international terrorism*, related to the concept of violence and ignoring any reference of state terrorism:

4 Paul Wilkinson, *Terrorism Vs. Democracy: The Liberal State Response*, Frank Cass Publishers, London, 2001, pp. 12-13.

5 United Nations Security Council Resolution 1566, Article 3, 2004.

6 Parliament of the United Kingdom, *The Terrorism Act 2000*, 2000.

"The term terrorism means premeditated politically motivated violence perpetrated against non-combatant targets by sub-national groups or clandestine agents, usually intended to influence an audience. The term international terrorism means terrorism involving citizens or the territory of more than one country. The term terrorist group means any group practicing, or that has significant subgroups that practice, international terrorism".⁷

In addition, the FBI admits a formulation of the U.S. Code of Federal Regulations which focuses on coercion and unlawfulness, pleading for social and political objectives:

"Terrorism is the unlawful use of force and violence against person or property to intimidate or coerce a government, the civilian population, or any segment thereof, in further of political or social objectives".⁸

In the end, for the U.S Defense Department it is "the unlawful use or threatened use of force or violence against individuals or property to coerce or intimidate governments or societies, often to achieve political, religious, or ideological objectives".⁹

Which is still the most preferable manner of dealing with an armed conflict in an age when military violence seems justified? In other terms, could counter-terror war be just and compulsory in the conditions where it can be treated as having justified reasons?

From one point of view, the classical just war theory may argue in favour of three different reasons. First of all, despite the claims that ethical arguments delete any connection with politics and military strategy, the dominant ethical framework with respect to war – taught at military academies and articulated in international laws or in the code of military justice – is basically just war theory, often invoked by the modern war on terror itself, as in the case of the Bush administration:

"Because the war on terror will require resolve and patience, it will also require *firm moral purpose* [...]. We have a great opportunity to extend a just peace, by replacing poverty, repression, and resentment around the world with hope of a better day [...]. We will work for a just and peaceful world beyond the war on terror".¹⁰

Secondly, the counter-terrorism strategy appears to imply in its preliminary phases categories of the just war theory, betrayed, however, by a large use of

7 *Code of Laws of the United States of America*, Title 22, Section 2656 (f)d.

8 United States Department of Justice, Federal Bureau of Investigation, *The Code of Federal Regulations*, Title 28, Section 0.85.

9 Tomis Kapitan, "Terrorism' As A Method of Terrorism", Georg Meggle, *Ethics of Terrorism & Counter-Terrorism*, Ontos, Heusenstamm, 2004, p. 21.

10 White House Office of the Press Secretary, George W. Bush, *Graduation Speech at the United States Military Academy at West Point*, New York, June 1, 2002.

non-necessary force, independent of a just war logic, for instance, the war in Afghanistan: “The purpose for our actions will always be to eliminate a specific threat to the United States or our allies and friends. The reason for our actions will be clear, the force measured, and the cause just”.¹¹

Thirdly, the classical just war theory and the war on terror share many particular, common elements, and sometimes even de-emphasise themselves in favour of the other. For example, Jean Elshtain argued that “despite the impressive and determined efforts, the just war frame is stretched to the breaking point as it can no longer provide a coherent picture of its discursive object – war in any conventional sense”.¹²

From another point of view, the arguments of the new strategy in counter-terror war rest on the claim that the nature of war itself is now transformed in the contemporary context. This technological and conceptual revolution can be also understood as a problem concerning the asymmetries in military capabilities, which leads to asymmetric conflicts where opponents use unequal weapons: “We can assume that our enemies and future adversaries have learned from the Gulf War. They are unlikely to confront us conventionally with mass armor formations, air superiority forces, and deep-water naval fleets of their own, all areas of overwhelming U.S. strength today. Instead they may find ways to attack our interests, our forces, and our citizens, they will look for ways to match their strengths against our weaknesses”.¹³

In asserting whether war on terror is acceptable, the previous traditional claims will have to analyse if other methods of dealing with terrorism might be effective or, as some just war theorists suggest, to even distinguish counter-terrorism from a real war.¹⁴ Nevertheless, understood as war and conceived in its real manifestations, terrorism expands the notions and practice of traditional warfare because “the threat of terrorist attack is terrorism”¹⁵ and counter-terrorism or the war on terror similarly explores the configuration and limits of military strategy itself because “there is no way to defend everywhere at every time against every technique. Therefore you simply have to go after them”.¹⁶ The inability to protect all assets in a just war or from terrorism situates prevention on a higher level, with the difference that, this time, it will be exclusively defined as a pre-emptive strike with no reasonable strategy or negotiations: “The only defense against terrorism is offence. You have to simply take the battle to them because everything – every advantage accrues to

11 Executive Office of the President of the United States, United States National Security Council, *The national security strategy of the United States of America*, Chapter V, Washington D.C., September, 2002.

12 Jean Bethge Elshtain, “Reflections on war and political discourse: Realism, just war, and feminism in a nuclear age”, *Just War Theory*, Columbia University Press, New York, p. 268.

13 United States Government Printing Office, United States National Defense Panel, *Transforming Defense: National Security in the 21st Century*, Washington D.C., 1997, p. 11.

14 Michael Walzer, “First, define the battlefield”, *The New York Times*, 21 September 2001, A27.

15 Paul R. Pillar, *Terrorism and U.S. Foreign Policy*, Brookings Institution Press, Washington D.C., 2001, p. 14.

16 Donald H. Rumsfeld, Interview with *USA Today*, 24 October 2001.

the attacker in the case of a terrorist. The choice of when to do it, the choice of what instruments to use and the choice of where to do it, all of those things are advantages of the attacker”.¹⁷ In other terms, the war on terror would legitimate performance of extra permission activities and the just war should tacitly approve these because “there is no other choice” in conditions where the new conflict seems to be a paradigm case of “just fear” which demands specific pre-emption or combative action. Indeed, the war on terror adopts new coordinates concerning spatial and temporal limits because the traditional battlefield or duration already fade away: “We must take the battle to the enemy, disrupt his plans, and confront the worst threats before they emerge [...]. Our security will require [...] a military that must be ready to strike at a moment’s notice in any dark corner of the world. And our security will require all Americans to be forward-looking and resolute, to be ready for pre-emptive action when necessary to defend our liberty and to defend our lives”.¹⁸ You attack first or you will be attacked anyway. In this view, the war on terror looks rather like state politics than a defined armed conflict: “Our war on terror begins with Al Qaeda, but it does not end there. It will not end until every terrorist group of global reach has been found, stopped and defeated”.¹⁹ Indeed, “we intend to pursue it until such time as we’re satisfied that those terrorist networks don’t exist. That they have been destroyed”.²⁰ Consequently, though it is still possible to fight in self-defence – as already stated, a just war is conducted in conditions of self-defence or in defence of another (with sufficient evidence); additionally, Article 51²¹ legitimises an immediate action in self-defence, although it does not necessarily justify an indefinite, open-ended use of military force. Under these circumstances, the potential targets of terrorist assault should be protected to the greatest extent possible, reducing vulnerabilities while maintaining a judicious but legal alert which limits the damages of a terrorist attack and simultaneously constitutes a form of deterrence if terrorists believe their aims are compromised.²² In addition, specific

17 United States Department of Defense, Office of the Assistant Secretary of Defense (Public Affairs), *DoD News Briefing - Secretary Rumsfeld and Gen. Myers*, 18 October 2001.

18 White House Office of the Press Secretary, George W. Bush, *Graduation Speech at the United States Military Academy at West Point*, New York, June 1, 2002.

19 George W. Bush, “Address on terrorism before a joint meeting of Congress”, *The New York Times*, September 21, 2001, B4.

20 United States Department of Defense, Office of the Assistant Secretary of Defense (Public Affairs), *Donald H. Rumsfeld, General Richard Myers Briefing on Enduring Freedom*, October 7, 2001.

21 “Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security” (*Charter of the United Nations*, Chapter VII, Article 51, 1945).

22 Paul R. Pillar, *Terrorism and U.S. Foreign Policy*, Brookings Institution Press, Washington D.C., 2001; Jessica Stern, *The Ultimate Terrorists*, Harvard University Press, 1999.

or tailored intelligence, special operations and law enforcement military strategies should be implemented and distributed in order to detect, disrupt and sabotage terrorist planning and action,²³ without recurrence to injurious acts like irregular rendition or “torture by proxy”, according to a nationally and internationally effective strategy in order to prevent and reverse terrorism causes and consequences; this would provide a real alternative to political violence and counter-terrorism warfare. Strategic defence initiatives like the one outlined by Ronald Reagan in his discourse over his foreign policy position to halt terrorism – “We don’t negotiate with terrorists” – are futile and ineffective not because diplomacy and underground negotiations don’t work, but because both terrorists and counter-terrorists will utilise long-term violence as a legitimate and sole tool.²⁴

In sum, the morality of the counter-terrorist strategy calls into question the problem that the war “exists in a parallel legal universe in which compliance with legal norms is a matter of executive grace or is taken out of diplomatic or public relations necessity”.²⁵

What are, therefore, the morally justifiable political constraints and military restrictions that a government should be permitted to apply to its strategies and to impose on its citizens or soldiers in a war on terrorism and, in contrast, what are the special activities or the counter-terrorism strategies they should engage in? A pertinent argumentation should be centred on notable paramilitary notions like coercion or torture, assassination or targeted killings and the ethics of punishment or exceptionalism.

The ethics of exceptionalism: Execution, coercion and targeted killing

The discourse on the war on terror has imposed on philosophers and terrorism analysts a debate over the extent of the permissible restrictions on human rights and civil liberties perceived as “necessary” to prosecute counter-terrorism warfare. Essentially, the polemics have centred on whether any restrictions should be required, and, if they are, the balance that can be justified according to rights and punishment in the counter-terrorism circumstances. In the end, “the first aim of terrorist violence is the production of fear, horror etc. among a broad group of persons”²⁶ because the “terrorist calculation”²⁷ relies on unpredictable random violence, insecurity and fear.

Wilkinson argues that counter-terrorism warfare must be suppressed “with

23 Eric Lichtblau, “U.S. raids foil plots to send arms to al Qaeda and others”, *The New York Times*, November 7, 2002, A18.

24 Executive Office of the President of the United States, United States National Security Council, *The national security strategy of the United States of America*, Washington D.C., September 2002, pp. 5-6.

25 UNESCO Office of Public Information, Paul Hoffman, *Paper for UNESCO’s World Forum on Human Rights*, May 2004.

26 Daniel Messelken, “Terrorism and Guerilla Warfare: A Comparative Essay” in Georg Megle, *Ethics of Terrorism & Counter-Terrorism*, Ontos Verlag, Frankfurt, 2005, p. 58.

27 Ibid.

crushing military force”²⁸ because “the only good terrorist is a dead terrorist”.²⁹ Consequently, a Machiavellian position will argue that terrorist prisoners should be included in a specific legal category because their acts forfeit human rights and, therefore, justify a different and appropriate treatment in criminal courts, including torture; in contrast, theorists for whom the ends do not justify the means consider that abandoning the norms and values that are the foundations of modern democracy will constitute a legal conflict, making the state more vulnerable against a terrorist attack; Wilkinson particularly, states that abridging constitutional rights and liberties corrupts civilian and military administration, promoting major injustices in the name of national security³⁰ (e.g. the case of restricting measures adopted in Italy in 1970s, during the Red Brigades’ terrorist activities or the U.S. Patriot Act, formulated only 6 weeks after 9/11).

In these conditions, in the case when terrorist acts cause a government to adopt emergency measures such as suspending *habeas corpus*, the risk of alienating its own citizens and manipulating terrorist tactics through a permissive, legal, counter-terrorist network, becomes a fundamental collateral threat: ³¹ “it must be a cardinal principle of a liberal democracy in dealing with the problems of terrorism, however serious these may be, never to be tempted into using methods which are incompatible with the liberal values of humanity, liberty, and justice”.³² The U.S. Attorney General John Ashcroft (2001-2005) warned human rights activists who revealed the mistreatment of prisoners: “To those who scare peace-loving people with phantoms of lost liberty; my message is this: Your tactics only aid terrorists [...]”.³³ Also, in a memorandum to the President Bush on January 25, 2002, Attorney General Alberto Gonzales (2005-2007), the White House’s legal counsel in sidelining the State Department’s concerns about the use of coercion, argues that “the nature of the new war”³⁴ places a high premium on other factors, such as the ability to quickly obtain information from captured terrorists and their sponsors in order to avoid further atrocities against American civilians [...]. This new paradigm renders obsolete Geneva’s³⁵ strict limitations on questioning of enemy prisoners”.³⁶ In sum, it is suggested that the cases of alleged torture are not arguments of a counter-terrorism exceptionalism though they are elements of a systematic programme designated to extract information from terrorist suspects, their associates and any other alleged enemies of the U.S.

28 Paul Wilkinson, *Terrorism versus Democracy – The liberal state response*, Routledge, New York, 2011, p. 77.

29 Ibid.

30 Ibid.

31 Paul Wilkinson, *Terrorism Vs. Democracy: The Liberal State Response*, Frank Cass Publishers, London, 2001, p. 23.

32 Ibid., p. 115.

33 United States Senate Committee on the Judiciary, John Ashcroft, *Preserving our freedoms while defending against terrorism: hearing before the Senate Committee on the Judiciary*, 107th Congress, 2001.

34 On terrorism.

35 *Geneva Protocol on the Treatment of Prisoners of War*, 1949.

36 Anthony Lewis, “Making torture legal”, *New York Review* 15: 12, July 15, 2004, p. 2.

Is this kind of strategy ever justifiable, are democratic governments not obliged to implement any possible methods to protect their citizens and is it more preferable to inflict pain on one guilty suspect than place at risk thousands of potential victims of a terrorist atrocity?

Michael Ignatieff characterizes this case as one of “lesser evil ethics” where a political ethics is predicated on the idea of choice, performed by antagonistic leaders, between different evils.³⁷ Therefore, the prohibition on coercion should be maintained, invoking at least three major reasons, ignorance of which would shake an individual’s fundamental rights: firstly, the utilitarian argument that “torture always works” can be equal to the liberal statement that “torture does not work”³⁸, because the results of coercion are directly proportional to every specific case and their utilitarian claims cannot synthesize a golden ratio in order to override the fundamental rights arguments; secondly, coercion violates the *jus in bello* principle of the non-combatant immunity which can never be abrogated, even by the exceptionalism;³⁹ thirdly, coercion cannot be justified by an ethical background, because the claiming of a moral right to torture prisoners for extracting necessary information creates a precedent that others may use by abusing detainees, minorities and other civilians.⁴⁰ Still, exceptional circumstances and desperate necessity may dictate, though not excuse, the use of coercion which law and ethics properly defines in the 1984 U.N. convention against Torture as:

“Any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity”.⁴¹

And consequently, in order to justify the use of coercive interrogation techniques in the war on terror, governments have adopted two legal strategies for the prohibition of torture. For instance, the U.S. Defense Department argues that the President’s authority of managing military operations cannot be undermined by

37 Michael Ignatieff, *The lesser evil: political ethics in an age of terror*, Edinburgh University Press, Edinburgh, 2004, p. 140.

38 Mark Bowden, “The dark art of interrogation”, *Atlantic Monthly* 292, October 2003, pp. 51-71.

39 John E. Finn, *Constitutions in crisis: political violence and the rule of law*, Oxford University Press, Oxford, 1991, p. 42.

40 Jeff McMahan, “War as self-defense”, *Ethics and International Affairs* 18: 1, 2004, pp. 75-80; Fernando R. Teson, “Self-defense in international law and rights of persons”, *Ethics and International Affairs* 18: 1, 2004, pp. 87-91; David Rodin, “Beyond national defense”, *Ethics and International Affairs* 18: 1, 2004, pp. 93-98.

41 *United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, Article I, 1984.

international justice and that individual interrogators who use force or coercion may not violate the lawful prohibition because their act represents a national self-defense mission; in this respect, “necessity and self-defense could provide justifications that would eliminate any criminal liability”.⁴² The second strategy manipulates the interpretation of coercion itself; a Defense Department memorandum leaked to the public argued that the administration of drugs to detainees would violate the prohibition of torture only if it was calculated and intended to produce “an extreme effect”.⁴³ Similarly, the Assistant Attorney General Jay Bybee (2001-2003) states that real coercion must inflict more than just moderate or fleeting pain: “torture must be equivalent in intensity to the pain accompanying serious physical injury, such as organ failure, impairment of bodily function, or even death”.⁴⁴

In the same judicial framework, the targeted killing or assassination of U.S. citizens in the United States’ territory seems to be prohibited by the Constitution of the United States and by other Executive Orders of the U.S. Intelligence.

First of all, the only felony actually formulated by the Constitution is treason.⁴⁵ Still, the Due Process Clause’s protection of “any person” from being “deprived of life [...] without due process of law”,⁴⁶ raises the issue of capital punishment through its connection with a “serious harm” which is not unlawful because it is imposed with the full judicial process of criminal law although extra-judicial killing is ordinarily excluded from such exceptional process. Additionally, the Fourth Amendment’s protection against unreasonable seizures⁴⁷ indicates another reason, because killing a suspect when apprehension is impossible or possible only at the risk of serious harm to self or others is reasonable as a last resort,⁴⁸ while killing him when apprehension is possible without risk of serious harm to self or others is not, and violates the Fourth Amendment.⁴⁹ Thus, the premeditated killing of a U.S. citizen in the United States or an assassination would be unlawful, yet the targeted killing discourse typically organizes its arguments against aliens abroad who are not included in the Fourth Amendment. In the *United States v. Verdugo-Urquidez*,⁵⁰ the Court determined that the individuals protected by the Fourth Amendment do not include aliens situated outside the United States who do not have “substantial connections with this country”⁵¹ so the Fourth Amendment’s protection against unreasonable conflict cannot, apparently, oppose the targeted killing of a specific “unconnected” foreign national abroad.

42 “Ashcroft holds torture memo”, *AFP*, June 9, 2004.

43 Anthony Lewis, “Making torture legal”, *New York Review* 15: 12, 15 July 2004, p. 2.

44 Ibid.

45 *Constitution of The United States*, Article III, § 3, cl. 1.

46 *Constitution of The United States*, Amendment V; Amendment XIV, § 1.

47 *The Fourth Amendment* stipulates that people have the right “to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures” (*Constitution of The United States*, Amendment IV).

48 William C. Banks, Peter Raven-Hansen, “Targeted Killing and Assassination: The U.S. Legal Framework”, 37 U. Rich. L. Rev. 667, March 2002.

49 Ibid.

50 *United States v. Verdugo-Urquidez*, 494 U.S. 259, 1990.

51 Ibid., 271.

On the contrary, the Fifth Amendment protects “any person” from the deprivation of life without due process,⁵² meaning the rights of aliens abroad (“all would agree [...] that the dictates of the Due Process Clause of the Fifth Amendment protect the defendant”, in that case a Mexican national residing abroad⁵³) and even their targeted killing abroad, as one appellate Court has expressly stated in dictum.⁵⁴ However, the majority in *Verdugo-Urquidez* also impliedly that they rejected the fact that enemy aliens may be entitled to due process rights abroad,⁵⁵ consequently, the D.C. Circuit Court of Appeals has, more recently, firmly rejected the fact that the Fifth Amendment prohibits U.S. assets from torturing foreign nationals abroad. If the Court is right, then the Fifth Amendment would not be against to the targeted killing of foreign nationals.

The United States Intelligence Executive Order 12333,⁵⁶ coordinated by the Department of State, General Counsel, Central Intelligence Agency, Legal Adviser, National Security Council, Office of Legal Policy, Department of Justice, General Counsel, Department of Defense and the Judge Advocate Generals of the Navy and Air Force, prohibits assassination as a matter of national policy, though without exploring its connotations or applications. Only assassination in the context of national and international law for providing guidance in revision of U.S. Army Field Manual 27-10, *The Law of Land Warfare*, consistent with Executive Order 12333 is explored; in addition, its disclaimer states that the memorandum is not intended to be and does not constitute a statement of policy. In different words, its judicial value is disregarded.

Under these circumstances, what it is about torture,⁵⁷ as opposed to simply killing someone in war, that makes it so blamable and why does the axiology of warfare distinguish between “just war” and “(unjust) war on terrorism” while coercion simply remains identical to a non-admissible policy?

Typically, the discourse can analyse four distinct arguments. David Sussman affirms that coercion is wrong because its ultimate reason is to force the victim into colluding against himself, experimenting with powerlessness and yet being constrained to manifest “active complicity in his own violation”,⁵⁸ which violates not only his agency and autonomy but also actively perverts them.⁵⁹ At the same time, an ethical argument against coercion criticizes the use of violence against non-combatants and defenceless individuals, therefore violating the principle of non-combatant immunity⁶⁰ which cannot be justified using the same pattern as other

52 *Constitution of The United States*, Amendment V.

53 *United States v. Verdugo-Urquidez*, 494 U.S. 278 (1990).

54 *Ibid.*

55 *Ibid.*, 269.

56 Office of the Judge Advocate General’s Corps of the United States Army, *Memorandum of Law – Executive Order 12333 and Assassination*, 20310-2200, Washington D.C., November 2, 1989.

57 Majima Shunzo, “Just Torture?”, *Journal of Military Ethics* 11 (2), 2012, pp. 136-148.

58 David Sussman, “What’s wrong with torture?”, *Philosophy and Public Affairs* 33: 1, 2005, p. 4.

59 *Ibid.*, p. 30.

60 Henry Shue, “Torture”, *Philosophy and Public Affairs* 7: 2, 1978, pp. 124-143.

sorts of political violence. On one hand, the secular critics advance the analogy with individual self-defence, where an individual can defend himself against an abusing attack and even kill his attacker as long as the killing is compulsory and proportionate and the punishment fairly applied. On the other, killing is justified as long as it is conducted with right intentions, for the common good and to preserve peace, and is not undertaken out of feelings or impulses (hate, envy, retribution etc). The critical difference which interferes between a soldier on a battlefield and a victim of torture is that the latter does not pose any threat to the torturer because after his capture he ceases to constitute a combatant but he becomes a non-combatant and therefore inviolable.⁶¹ Simultaneously, the problem opens the issue of the “ticking bomb” paradigm, where the terrorist who knows about the location of a planted bomb refuses to cooperate with the interrogator, yet is considered a non-combatant.⁶² The argument could also be misinterpreted; captive combatants could plausibly still be considered combatants for the duration of the conflict and tortured, on the logical assumption that they have to be aware of operational secrets which could basically save other lives. Again, the deontological argument, which holds torture as wrong in itself, because it violates fundamental human rights and civil liberties: “there is [...] no objection in principle to the idea of human rights that are absolute in the sense of being categorically exceptionless. The most plausible candidates, like the right not to be tortured, will be passive negative rights, that is, rights not to be done to by others in certain ways”.⁶³ In the end, the utilitarian argument exposing the reciprocity and value of moral consistency, which achieves the greatest and objective good by following a rule prohibiting torture. In fact, the records testify that coercion is more often used as a subjective instrument for achieving selfish and individual purposes against opponents, its prohibition being then intrinsic to the preservation of democratic and liberal principles. In addition, the principle of reciprocity may certify a mutual benefit from a rule prohibiting torture, given conditions where all combatants are potential victims of coercion at a certain moment of time, so the greatest good is obtained by establishing a general prohibition on torture.⁶⁴

Proportionality and exceptionalism in the ethics of terror

The contemporary advent of counter-terrorism warfare compromises all conventional and traditional conflict features⁶⁵ like the combatant/non-combatant distinction, sustenance, targets, strategies and communications, identifying, by way of contrast, the archetypical practices that catalyse the inaugural discussion on the war on terror: coercion (especially interrogational methods and variants);

61 *Ibid.*, pp. 127-130.

62 *Ibid.*, p. 141.

63 Joel Feinberg, *Social Philosophy*, Prentice-Hall, Englewood Cliffs, New Jersey, 1973, p. 88.

64 Fritz Allhoff, “Terrorism and torture”, *International Journal of Applied Philosophy* 17: 1, 2003, p. 107.

65 Timothy Shanahan, *Philosophy 9/11: Thinking about the War On Terror*, Open Court Publishing Co., Peru, 2005; Lionel K. McPherson “Is Terrorism Distinctively Wrong?”, *Ethics* 117, pp. 524-546.

assassination and targeted killing; enemy combatancy and prisoner of war status; each of them constituting serious violations of fundamental human rights as well as of international law enforcement. Consequently, incorporating the above-mentioned and different examples, all these circumstances sustain an extreme ethical perspective, suggesting the necessity to make exceptions to traditional norms, which can ultimately normalise immoral behaviour, because both juridically and philosophically, there would no longer be justification for the exception itself.⁶⁶

Particularly, the ethics of exceptionalism should provide an account of four elements. Firstly, it must configure the nature of exception, determining a sort of stricture that would apply in the absence of the exception; this would consist of primarily moral and legal limitations or norms which could be applied for both classes (ethical and juridical), their various distinctions being practically eliminated. Secondly, it should clearly state which object is being excepted, because the exceptions have to be granted to a specific subset of binding norms; therefore, what is excepted must be an object to which the norm otherwise would have applied, if it were not for the exception. Thirdly, it must properly determine the scope of the exceptions; in the case of counter-terror warfare where the purpose is group-based, some groups have a structural configuration, whereas others are excepted (exceptionalism is fully consistent with “All *Xs* can/cannot/must ϕ , except for *Ys* and *Zs*”); additionally, this kind of scope should not be mutually exclusive (some norms could bind pursuant to two different requirements and otherwise be excepted) though they may be divided according to temporal and spatial exceptions, occurring under temporal and spatial axes respectively. Fourthly, it should explicate the reasons why the exception and the norms are being made and in doing so avoid any arbitrary or contingent character. In the context of the war on terror, the ethics of exceptionalism should specifically determine the groups that must be excepted and the relationship that they bear to the groups that will not be excepted, considering whether there exists morally relevant distinctions between these groups that might serve to effect a differential moral status to them. Both of the groups that are affected by exceptions made for coercion and enemy combatant status represent, ideally, those that have critical intelligence, and those that are targeted for assassination are similar as they are assessed to pose threats in the present or in the future. Despite differences – the former group’s crimes could be of omission (not revealing information), while the latter group’s crimes would be of commission (effecting the harm directly), all of these excepted groups are responsible, actively or passively, for some threat and, through their agency can abrogate the threat.⁶⁷

In sum, the ethics of exceptionalism could encounter serious objections because many of those subject to detention or torture have, in fact, no critical intelligence and some of them are not even real terrorists at all.⁶⁸ Consequently, several cases

66 Andrew Fiala, “A Critique of Exceptions: Torture, Terrorism, and the Lesser Evil”, *International Journal of Applied Philosophy* 20(1), 2006, pp. 127-142; David Rodin, “The Ethics of War: State of the Art”, *Journal of Applied Philosophy*, 23(3), 2006, pp. 241-246.

67 Fritz Allhoff, “The War on Terror and the Ethics of Exceptionalism”, *Journal of Military Ethics*, Vol. 8, No. 4, 2009, p. 279.

68 Lolita Baldor, “More Than Half of Guantánamo Detainees Not Accused of Hostile Acts”,

of targeted assassination concern innocent subjects who simply disagree about the counter-terrorism strategy or other available options. In these terms, the analysis does not present important implications regarding the morality of groups which are the basis of the exceptionalism, but only concerns particular cases: it only shows that the exceptions were applied to the wrong groups, a group that (maybe) includes terrorists, as well as non-combatants to whom the exceptions should not apply. Nevertheless, the ethics of exceptionalism would, most probably, implement its own “shock and awe” counter-terrorist strategy, counting the non-exceptions among the “necessary and inevitable casualties”. Put otherwise, this means enduring war on terrorism’s ethical values.

Finally, the principles and the response to terrorism are nowadays significantly contained in the two Hague Conventions (1899 and 1907) and the four Geneva Conventions of 1949, whose documents limit how wars can be fought, what weapons can be used, and what persons can be attacked. The laws of just war and the regulations of the war on terror, incomplete as they certainly are, can be explained and resumed on the basis of two humanitarian principles: first, each individual deserves respect as a human being (Kant), using the term “person” to refer to self-conscious, autonomous, rights-bearing individuals; second, human suffering and military casualties ought to be minimized:

“In possible responses to international terrorism, the use of directed or controlled violence against the responsible terrorists seems justified when less radical means of effective response are not available [...]. If violence is employed only as a last resort, both procedural and institutional justifications are credible in such a situation in terms of inherent human rights. When non-combatants are knowingly endangered, however, even if such risk is necessary to permit effective response, the case becomes much less clear [...] Under the murky moral conditions of counter-terrorist activity and the prosecution of low-intensity warfare — the most likely forms of commitment for American military forces in the near future — the moral dimensions of military activity become hard to discern [...] let me also note that those actions against terrorism that are appropriate for our government should be carried out with maximum force and efficiency for international terrorism is indeed a growing threat to legitimate governments — a threat more dangerous than many appreciate. Paul Johnson calls it ‘the cancer of the modern world.’ If we are to prevent it from destroying the societies it attacks, we must apply drastic and radical treatment to what clearly is a malignancy. At the same time, we must ensure that our responses to terrorism do not injure the moral fabric of our society”.⁶⁹

Some responses to terrorism also imply the violation or infringement of

Associated Press, 9 February 2006; Darius Rejali, *Torture and Democracy*, Princeton University Press, Princeton, New Jersey, 2007, p. 510.

69 United States Department of Defense, United States Army War College Quarterly, United States Army War College, Anthony E. Hartle, “A Military Ethic in An Age of Terror”, *Parameters*, Vol. 17, No. 2, Carlisle Barracks, Pennsylvania, 1987, pp. 68-75.

individual rights. Under what circumstances can such rights be justifiably infringed or overridden? In possible strategies to combat international terrorism, the use of directed or controlled violence against the terrorist assets seems justified when less radical means of warfare or effective law enforcement are not available. Still the rights of the terrorists should be infringed in the same manner that the rights are of a criminal before the Court, otherwise resorting to counter-terror will be undertaken only as a final solution, in which both procedural and institutional justifications are knowingly endangered. Though, when non-combatants are purposely threatened, however, even if such risk is necessary to allow effective operations, the case becomes much less clear.

As a final point, to fight for freedom while implementing a genuine counter-terrorist operation means to confront oppression and violation of fundamental human rights. Hence, to fight for freedom and against terrorism means to oppose such infringements. Under these circumstances, if terrorism is defined as “the deliberate and systematic murder, maiming, and menacing of the innocent to inspire fear for political ends”, then a genuine counter-terrorist action cannot be committed with logical consistency and reason against such violations, for it would become a terrorist warfare itself in the name of confronting a lesser evil.

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Autonomy and Plastic Surgery for Teenagers

Leria BOROȘ

A principlist approach to medical ethics

This paper is dedicated to several problems that I tackled in April 2012 during a one day workshop held in a Romanian high school¹. The main goal of my workshop was to teach students about moral principles and to show them how they can use these principles in ethical decision-making regarding plastic surgery. The second goal was to assess their reaction concerning teenagers' capacity to take good decisions when it comes to plastic surgery. My hypothesis was that they would praise teenagers' and youngsters' autonomy. Although the ethical matrix that I filled out with them revealed an orientation towards the decision to undertake plastic surgery, still the students were also interested in finding out more about the long-term effects of aesthetic surgery interventions before deciding to change some part of their body. Of course, plastic surgery involves more than one actor – the patient – and the goal of this article is to discuss the ethical aspects of plastic surgery interventions for teenagers in a more detailed manner than I have done before, in my workshop, and from a principlist point of view. The principlist paradigm is not elaborated here in detail, only the main aspects of this approach are reiterated.

Plastic surgery for teenagers is a subject of debate different from other subjects because it is a particular type of surgery. The problem of patients' autonomy is much more delicate here since we are talking about medical interventions that are not aimed at curing or alleviating a health problem, but changing one or more details of one's appearance. Moreover, while in other types of medical interventions we are used to focusing on the problem of informed consent, in what concerns aesthetic interventions for teenagers we may say that these patients are rushing to give their consent for having their bodies operated upon. They may seem very decided and even very competent to decide on having plastic surgery interventions, but these could be simply appearances which hide some serious problems of self-confidence. Teenagers are a vulnerable category of patients. They are not yet adults, but they have some legal rights that adults enjoy, including the right to have plastic surgery. A doctor may notice that a teenager has some problems of self-confidence which may not be alleviated through aesthetic surgery because they come from a disorder related to self-image, rather than to a real need to correct some part of the body. In this case, the doctor may refuse to make the intervention, but the patient may accuse him of breaching the principle of respect for autonomy. The doctor might argue that s(he) respects the principle of beneficence, which in some cases prevails over autonomy. In order to take a good decision the doctor must consider the issue in its complexity; a good tool for helping him is the ethical matrix, which deals, in Ben

¹ I held the workshop at the Theoretic High-School of Costești, county Argeș, with students of a 12th grade class, at the invitation of their philosophy teacher, Iuliana Gabriela Popa.

Mepham's version², with three principles: wellbeing, autonomy and fairness.

Autonomy has been largely debated for the last decades in bioethical literature, but a consensus has not been reached on it nor on what concerns competence, a concept which is strongly related to autonomy. I defend an account of autonomy as part of a cluster of principles which also comprises beneficence, non-maleficence and justice. Some authors argue for fewer principles, but I plead for a richer principlism, more capable of helping a moral agent to take decisions in morally complicated situations. The moral framework that I consider more suitable for medical ethics is the principlism of Tom Beauchamp and James Childress discussed in *Principles of Biomedical Ethics*. Beauchamp and Childress define "common morality" as "the set of norms that all morally serious persons share".³ Common morality comprises universal norms, i.e. always available and applicable to everybody. These rules come under basic ethical principles, namely beneficence, non-maleficence, autonomy and justice. For the purpose of this paper it is not necessary to have distinct columns for beneficence and non-maleficence, they may be included under the principle of wellbeing. Thus, the corresponding ethical matrix will consist of a table in which I mention the *prima facie* ethical principles of autonomy, wellbeing and fairness in columns and the two main categories of stakeholders – patients and doctors – in rows. This table is followed by a matrix of consequences regarding the decision to undertake or not to undertake plastic surgery interventions by teenager patients. However, the ethical matrix must not be confused with an ethical decision-making tool, but regarded as an instrument which gives guidance to the ethical decision-making process, because it sheds light upon the ethical implications of a problem.

Autonomy and competence

I have already mentioned that the literature on autonomy is divided and that authors in this field have different opinions, but we can still draw some common points out of these different accounts. We need to establish the elements of autonomy in order to analyse the problem of plastic surgery for teenagers.

Derek Morgan believes that autonomy is given by self-control, procedural independence and competence. Procedural independence is an interesting concept and a very useful one in considering our subject, because, as the author writes, it means freedom "from the domination of others, in which judgments are not founded on fashion, custom or the opinion of others".⁴ When a teenager is willing to have an aesthetic medical intervention we may wonder if he or she is making a rational decision or is simply following some ideal of beauty dictated by mass

media, by fashion designers, through subliminal advertising, or by someone else. This problem is tightly related to competence, because we have to understand when a teenager is competent to decide to have plastic surgery and when (s)he is not competent and is just under the influence of fashion or of what others say. Morgan thinks that an autonomous decision implies a rational choice motivated by the conviction that the chosen thing is a good one. The motivation must not be reward or fear of punishment. What the author says does make sense and has an interesting signification for our subject, because aesthetic interventions are not motivated by the desire to treat health problems, but by a different desire – to change something in one's appearance.

Other authors believe that rational decision-making is an element of competence. Gert, Culver and Clouser state that a competent patient has the ability to take rational decisions after he has understood the information he has been provided with and has appreciated the risks and the consequences that the medical intervention will have.⁵ I shall discuss the problem of competence in the following section of this article; here I want to draw attention to the fact that sometimes concepts like autonomy, competence and even voluntariness are described as synonyms, though they are not, or as having the same constituents, which they do not. The confusion between autonomy and competence is somehow understandable. As Beauchamp and Childress note, "the criteria of the autonomous person and of the competent person are strikingly similar".⁶ So what are the criteria on which we can ground our assessment of autonomy?

Before analysing the criteria of autonomy, it is necessary to emphasise the fact that we cannot talk about complete autonomy or absolute lack of autonomy. A person is more or less autonomous, so a proper account of autonomy takes into consideration that there are degrees of autonomy. Beauchamp and Childress distinguish three conditions of an autonomous action: acting intentionally, acting with understanding and acting without controlling influences that determine the action.⁷ If the first condition does not allow degrees, the other two are fulfilled in different degrees. The authors believe that a complete absence of influence is impossible and thus we cannot expect to have absolute autonomy. Of course, we should be careful not to consider a decision made under constraint or lack of understanding autonomous. James Stacey Taylor talks about a threshold condition, i.e. a lack of influence through information. In order to be autonomous the moral agent should not be manipulated by others. However, the author believes that this condition is rather an ontological one and that we need epistemological conditions for an adequate account of autonomy. Taylor states that "it is fair to adopt as the default position the view that unless there is reason to believe otherwise it should not be assumed that persons' autonomy with respect to their decisions (desires, actions, and so on) is compromised through the illegitimate influence of others".⁸

2 Ben Mepham, Matthias Kaiser, Erik Thorstensen, Sandy Tomkins, Kate Millar published *Ethical Matrix Manual* in February 2006, as a result of their work during the project *Ethical Bio-Technology Assessment Tools for Agriculture and Food Production* founded by the European Commission, DG Research.

3 Tom L. Beauchamp, James F. Childress, *Principles of Biomedical Ethics*, sixth edition, Oxford: Oxford University Press, 2009, p. 3.

4 Derek Morgan, *Issues in Medical Law and Ethics*, London: Cavendish Publishing, 2001, p. 88.

5 Bernard Gert, Charles M. Culver, K. Danner Clouser, *Bioethics. A systematic approach*, second edition, Oxford: Oxford University Press, 2006, p. 231.

6 Tom L. Beauchamp, James F. Childress, op. cit., p. 113.

7 Ibid., p. 101.

8 James Stacey Taylor, *Practical Autonomy and Bioethics*, New York: Routledge, 2009, p. 16.

This is like saying that in real life people may suffer from others' influence, but from an epistemological point of view we are not allowed to analyse autonomy in this manner. Personally I believe that an epistemological account of autonomy which excludes an ontological point of view is useless, especially with respect to applied ethics.

The problem of influence, though difficult to tackle, should concern us in general when we talk about autonomy and special attention should be paid to it when we deal with vulnerable categories of people such as teenagers. We simply cannot close our eyes and think that teenagers are not sometimes influenced in their decision-making by mass media and fashion trends. They may become victims of inadequate messages about an ideal of beauty. This kind of influence is usually too subtle to notice and doctors have to rely on the absence of a more obvious type of controlling influence.

However, as sometimes it may be difficult to detect any type of influence, doctors have two other elements which can help them in establishing the degree of a patient's autonomy. Thus, a simpler task is to determine if the patient is acting intentionally, i.e. to determine if he or she is manifesting an obvious intention to have the aesthetic intervention. There is no need to give a more detailed account to this element of autonomy. Finally, the doctor should assess the patient's competence. This is a more difficult task, because competence is a complex capacity and, like autonomy, it is present in different degrees. Although a patient may seem competent from a legal point of view, he or she may be less competent from a moral point of view. A doctor may find a patient autonomous and competent, but not autonomous and competent enough to have a plastic surgery intervention. The threshold of autonomy and of competence is legally a fixed one, but from a moral point of view things may be different and a doctor should have a moral ground for deciding to refuse an aesthetic intervention for a teen patient. Such a moral ground can very well be the respect for beneficence.

I have mentioned above that for Beauchamp and Childress an autonomous action must fulfill three requirements: intentionality, understanding and lack of controlling influences. The condition of understanding can be replaced with the condition of competence, which is a very important concept when it comes to autonomy. The following section will deal precisely with this concept in order to give a deeper insight into autonomy itself. Competence is essential for autonomy, but competence cannot be reduced to understanding the information a patient is given by his physician.

Are teenagers competent enough to decide?

The accounts of the concept of competence are sometimes too permeated with technical details, a matter which brings them more into the sphere of a juridical concept than a moral one. If things were that simple we would not be asking if teenagers were competent to decide on having plastic surgery interventions. What makes the moral concept of competence different from the legal one is that the former allows degrees of the capacity to take decisions, while the latter cannot allow degrees and must be very clearly distinguished from incompetence. What law allows

is not always moral and if we think of our subject, we may say that doctors should meditate a bit before responding to their teen patients' requests.

What Beauchamp and Childress understand by standards of competence is close to the same thing as Gert, Culver and Clouser express in their definition of competence. Beauchamp and Childress state that, "physicians usually consider a person competent if he or she can understand a therapeutic or research procedure, deliberate regarding its major risks and benefits, and make a decision in light of this deliberation".⁹ Other authors argue that "competence is the ability to make a rational decision".¹⁰ They first express a definition which considers competence as a patient's capacity to understand the information (s)he is being given about his/her condition and about the medical intervention the doctor proposes and to appreciate the risks and outcomes that the intervention involves. They call this the U + A definition, U meaning understanding and A appreciation. Gert, Culver and Clouser claim that this definition is not comprehensive enough because a patient may show understanding and appreciation of the benefits and risks of an intervention, but he or she can still decide not to have it because of some irrational reasons. The problem here is that Gert, Culver and Clouser consider a rational decision to be that decision which complies with the doctor's opinion regarding the medical intervention. Moreover, they believe that their definition tacitly comprises understanding and appreciation of the benefits and risks of an intervention and that these should not be mentioned, because they are implied by the rational decision. However, as I have highlighted above, their account about the rational decision emphasises its compliance with the doctor's opinion whereas any decision which is contrary to this opinion is irrational. We should not forget that doctors may be wrong in their opinions and that patients may have their reasons to refuse a medical intervention. If they properly understand and appreciate the information but refuse the intervention they are not necessarily completely incompetent. On the other hand, they can agree with the doctor's opinion, though they do not understand and appreciate their condition and the consequences and risks of a medical intervention. Of course, when we consider health policies and laws we must distinguish competence from incompetence and we must have a clear threshold beyond which we can say about a person that she is competent. Things are not simple though and that is why ethical dilemmas appear. It is also why I believe that an adequate definition of competence should include the condition of understanding and appreciation of the benefits and risks of an intervention. Understanding and appreciating the possible good and the bad consequences of an intervention are very important in assessing a teenager's degree of competence, especially when it comes to appreciating the longer term outcomes, because plastic surgery results in a change of personal appearance that may bring about complications. In a section of the ninth chapter of her book *The Makeover Myth*, Bethanne Snodgrass, a plastic and reconstructive surgeon, exposes several psychological complications caused by undertaking plastic surgery. An undesired consequence of cosmetic surgery may be the distress experienced by the partner of a patient who has undertaken one or more interventions. The patient's partner may

⁹ Ibid., p. 114.

¹⁰ Bernard Gert, Charles M. Culver, K. Danner Clouser, *op. cit.*, p. 226.

feel inferior and (s)he may want to escape from an unequal relationship. Moreover, the patients may later suffer from “major psychological problems associated with cosmetic surgery, including body image disturbances and various forms of mental illness (cosmetic surgery addiction, eating disorders, delusional disorders, schizophrenia, and others). Studies indicate that up to 15 percent of people seeking cosmetic surgery have BDD,¹¹ the most severe form of body image disturbance”.¹² Psychological complications of the kind mentioned are less likely to occur when it comes to medical interventions for treating health problems. Moreover, the interventions for treating health problems are motivated by complications related to body functionality, not by aesthetic ideals. It is easier to say that deciding to have a medical intervention for treating a health problem is a rational decision. However, about a plastic surgery intervention, is it similarly simple to say it is a rational decision to have it? Appreciating that the psychological risks for teenagers who have aesthetic interventions are high is different from proposing a sliding-scale strategy for assessing teenagers’ competence. The sliding-scale strategy, which finds fervent proponents in Buchanan and Brock,¹³ wants us to assess the competence of the individual by taking into consideration the risks involved by a medical intervention. The higher the risks are, the higher the competence level should be. Such a view is dangerous and does not have sound grounds. Such a contingency regarding competence is not acceptable and it cannot help doctors in their decisions. The problem here is not about the level of risks, but about the nature of risks and the actors involved. What doctors need is not an assessment of competence based on the level of risks, they need to act with responsibility and what else is responsibility if not a principle of beneficence? However, the proponents of the slide-scaling strategy are not entirely wrong. They perhaps noticed that doctors do not ask a patient’s consent for administering a light analgesic, but when they want to proceed to a spinal intervention, for instance, they want to make sure that their patient is competent and that he or she understands the risks involved by this kind of intervention. What changes in the two cases is not the patient’s competence, but the risks of the medical procedures. Therefore, the doctor’s need to see that the patient understands his or her condition and that he or she correctly appreciates the consequences of the intervention change as well. The degree of competence may be the same for the patient who is administered a light analgesic and for the patient who is subject to a spinal intervention, but if the doctor does not consider informed consent necessary for the former situation and thus competence in giving informed consent, in the latter situation the doctor needs to make sure that the patient is competent enough to decide. What has changed is not the competence, but the need to assess it.

11 BDD stands for body dysmorphic disorder.

12 Bethanne Snodgrass, *The Makeover Myth. The Real Story Behind Cosmetic Surgery, Injectables, Lasers, Gimmicks, and Hype, and What You Need to Know to Stay Safe*, William Morrow & Co, 2006, pp. 216-217.

13 Allan B. Buchanan, Dan W. Brock, “Deciding for others”, in *Milbank Quarterly*, vol. 64, Supplement 2, 1986, 52-55.

The ethical matrix

The ethical matrix is a tool which had at the beginning the role of helping those who wanted to assess, from an ethical point of view, the introduction of new biotechnologies, but who did not have ethical expertise. It proved to be a very useful instrument, which does not have as its result a decision, but which helps the decision-making process. The ethical matrix must be informed by judgements and reflection in order to reach an ethical decision.

How this tool can be used based on the three principles of wellbeing, autonomy and fairness is shown below. I bring to attention a few problems involved in plastic surgery for teenagers and I will refer only to patients and doctors as stakeholders, i.e. involved actors, because it is not necessary for the purposes of this article to include the parents, the community or the society in general. The matrix will serve only as an illustration of how the tool can be used, so I do not aim to treat the subject exhaustively in the table in figure 1.

Perhaps it is not very obvious what justice has to do with plastic surgery for teens. However, some students raised problems of fairness regarding plastic surgery for teenagers. I have not included justice in the ethical matrix, because I had not deemed it necessary since the stakeholders involved in my analysis were doctors and patients. I had thought of justice more from the point of view of laws that should take into consideration the differences in psycho-somatic development, in order to protect teen patients from taking risky decisions about undergoing plastic surgery. They thought that, although plastic surgery interventions do not have a medical rationale, these operations should be paid from the public budget, because it is not fair that some teens can afford it while others cannot. The teens who afford and undergo plastic surgery interventions gain a more pleasant physical aspect, while other persons of their age may lose their self-confidence. Therefore, the students who deemed unjust the fact that some teens undergo plastic surgery because they afford it and others cannot have aesthetic surgery interventions because their parents are poorer thought as well that this injustice should be compensated for by state intervention. In their opinion, a budget from public funds should be available for teenagers who want to undergo plastic surgery interventions. After the discussion that I had with the students I reviewed my approach and included fairness in the matrix.

In what concerns the principle of non-maleficence, it must be said that it is extremely important that teen patients be cautious not to decide on an intervention which they later regret (which brings undesired side effects, pain, undesired changes of one’s self-image). That is why the aspect of understanding is so important in assessing a person’s autonomy. In their turn, doctor must strive to avoid negative outcomes¹⁴ like problems with pregnancy, lactation and breast feeding, asymmetry (in breast implant)¹⁵, under-correction (residual deformity), over-correction (new

14 The examples are taken from Christopher Stone’s book *Plastic Surgery. Facts*. 2006.

15 Stone gives in his book more information about different kinds of aesthetic intervention, including risks and possible negative outcomes. In what concerns breast implantation there is also the risk of making a radiological diagnosis of breast cancer more difficult or the risk,

deformity), airway obstruction, scars (in rhinoplasty) and so on. These are risks involved in plastic surgery and they cannot be predicted with certainty. They may or may not occur. They are often the result of doctor's mistakes, but doctors might make mistakes in either plastic or ordinary surgery. We cannot deem them as hypothetical consequences and that is the reason why I have not included in the ethical matrix the aspects related to non-maleficence. On the other hand, they are an important part of the debate on plastic surgery for teenagers, as I noted when I brought to attention the issue of understanding with respect to the concept of autonomy. However, I have not included fairness in the matrix of consequences, because the "battle" in the debate I had with students was actually between autonomy and beneficence and the aspects related to justice are less relevant in what factors concern the decision to undergo plastic surgery interventions.

Respect for:	Autonomy	Wellbeing	Fairness
Patient	Freedom to act without parents' and school intervention.	Satisfaction regarding the physical aspect.	Undergoing plastic surgery interventions in the public health system.
Doctor	Being free to agree to an intervention when a high enough degree of patient's competence or autonomy is noticed.	Refusing an intervention in order to do what is best for the patient, i.e. to preserve the appearance of a part of the body where change might result in an undesired psychological outcome.	Using resources from medical public institutions for plastic surgery interventions (and not only for surgery interventions which alleviate health problems). ¹⁶

Figure 1: An ethical matrix used in the ethical analysis of plastic surgery for teens

in case of cancer diagnosis, of undergoing a mastectomy instead of a lumpectomy. The risks are the same for teen as for adult patients, but we may wonder if the former's understanding and appreciation related to these risks are the same as the latter's. How many young girls would think of difficulties in breast cancer diagnosis? When they are young they believe they will never be sick. Besides these risks related to breast cancer diagnosis and treatment there are also other risks, even aesthetic complications of plastic surgery interventions which may not be seriously taken into consideration when the patient strongly desires an operation. Every surgical intervention has its risks, but when there is a medical urgency it is understandable to take the risks. Taking the risks in medical urgencies is a justified decision and since surgical interventions for health problems are done with the clear goal of alleviating or treating these problems we cannot suspect hidden, subtle influences in the patient's decision. The doctor must detect more obvious influences, like the pressure of family members. I'm not saying that this task is a simple one, my goal is just to highlight the difference between precautions (as an attitude reflecting respect for the principle of non-maleficence) needed in the case of medical urgencies and precautions needed in the case of plastic surgery.

¹⁶ In public medical institutions only very few aesthetic interventions are allowed, when they

Respect for:	Autonomy		Wellbeing	
	The patient undertakes plastic surgery	The patient does not undertake plastic surgery	The patient undertakes plastic surgery	The patient does not undertake plastic surgery
Patient	Enjoys his/her freedom to do what he/she wants with his/her body (+2). The teenager feels treated as a free and responsible person (+2).	(S)he feels constrained by family/school to refrain from doing what he/she wants with his/her body (-2). The teenager feels that his/her parents do not trust his/her competence to take good decisions (-2).	(S)he might gain a higher self-esteem and self-image (+1). The teenager might become more attractive and admired by persons of the same age (+1).	(S)he avoids the risks involved by plastic surgery interventions (+1). The teenager does not obtain the physical appearance that (s)he desires (-2).

Figure 2: A matrix of consequences used in the ethical analysis of plastic surgery for teens

The matrix can be filled with more aspects and each can receive a score, for instance on a scale from -2 to +2. Using a score is not a mathematical operation, but is an operation which helps the stakeholders involved. The score is assigned depending on the consequences of the possible actions. The scale from -2 to +2 can help us to assess the degree in which an action satisfies a principle or not. We may thus draw another table corresponding to a matrix of the consequences of undergoing and not undergoing plastic surgery interventions by teenagers. The cells in the table above (figure 2) summarize the issues discussed with students and the scores that they have assigned to each aspect. Moreover, the matrix in figure 2 comprises just aspects related to teen patients since only students were present at the workshop. With respect to doctors, the possible actions to take into consideration are a bit different. For instance, a doctor can decide to operate on a patient or to refuse a plastic surgery intervention to a teenager, but these are different decisions from those of teenagers. Though the results may seem the same – the teen patient is either operated on or not – one cannot substitute one's opinion for a doctor's opinion. A doctor's reasons to agree or to refuse to operate on a teenager are significant in his/her decision. Supplementary debate with doctors would, therefore, be necessary in order to fill the matrix. Of course, the discussion can continue with more stakeholders: parents, schools, policy-makers, community representatives.

are intended to correct some injuries like scars due to a fire, for instance. Rhinoplasties, abdominoplasties, breast implants etc. are only performed in private medical institutions. However, sometimes it is difficult to control the situation and doctors may perform in public institutions interventions like rhinoplasties when they perform septoplasties, which are deemed necessary because of the symptoms they involve: inability of normal breathing, nasal bleeding, pains and so on. Doctors should not use resources of public medical institutions for plastic surgery interventions which are not allowed in these institutions, because those resources are paid through taxes taken from every citizen and we cannot pretend, at least for the moment, that citizens should contribute to the fulfillment of some of the aesthetic desires of other citizens. The resources destined for health problems should be used for this purpose alone. Taking away something from these resources and giving them another destination is unjust.

Although the purpose of the ethical matrix is not to draw a conclusion about a decision based on mathematical calculations, the scores assigned to each aspect revealed in the table above might orient us in one or other direction. From the point of view of students, the decision to undertake plastic surgery seems to be more desirable if we take into consideration the principle of autonomy. In what concerns the principle of wellbeing, the consequences matrix seems to sustain once again the decision to undertake plastic surgery to the detriment of the opposite decision. However, students were not very radical and they agreed that they might have subjective and immature opinions. Most of the teens expressed their interest in learning about other stakeholders' opinions regarding plastic surgery and they acknowledged that they might not know certain valuable information concerning the consequences of plastic surgery.

Conclusion

During the one day workshop on plastic surgery and ethical decisions that I held in a Romanian high school in April 2012 I understood that my hypothesis regarding the teenagers' proclivity to praise autonomy to the detriment of other moral principles was not entirely confirmed. The results presented in the ethical matrix included in the prior section of the paper reveal an orientation of teenagers towards valuing autonomous decisions, but at the same time many teenagers firmly expressed their concerns related to the physical and psychological risks that cosmetic surgery may bring to teen patients. Some of them also had doubts that a teenager who is unsatisfied with his/her physical appearance has the capacity to make the best choice when it comes to deciding to undertake plastic surgery or not. Other students claimed that it was better for teenagers to keep their natural look instead of undertaking plastic surgery. However, there were also students who stated that teenagers should be completely free when it comes to decisions to undertake plastic surgery. The debates during the workshop revealed that even if the most of the students who expressed their opinions did not believe that all teenagers were competent enough to make good decisions related to plastic surgery and that therefore they should not be considered autonomous, there were still other teens who praised autonomy and who were not aware of the risks implied by cosmetic medical interventions.

Plastic surgery constitutes a special type of surgery for several reasons and as a special type it involves special ethical implications. First, plastic surgery, or at least a great deal of it, has not a strictly medical motivation, but it is motivated by aesthetic ideals that patients want to achieve. The outcomes expected from plastic surgery are quite different than the outcomes expected from ordinary interventions which people undergo in order to heal or alleviate a health problem. Second, if in other types of surgery the doctors face the problem of having to convince patients to accept interventions which alleviate health problems or even save their lives, in plastic surgery patients sometimes have odd ideas about how their body should look and sometimes they request interventions which might be dangerous and unsuitable for their physical constitution. Third, the influences which might lead a person to decide in favour of plastic surgery are more difficult to detect than in cases of general

surgery, because they are usually more subtle and hidden. Moreover, teen patients deemed, legally speaking, autonomous and competent to have plastic interventions, are more vulnerable to some types of influences, such as those exercised by mass media and fashion, than adult patients are. Teens may be subject of manipulation not only because they do not have the necessary maturity to defend themselves from this type of influence, but also because the impact of this manipulation is more serious at their age, when physical appearance becomes a critical preoccupation and subject of concern. However, the physical aspect of appearance stays important after surgeries too and if a person had some self-image disorders before undergoing an aesthetic intervention, he or she is likely to remain unsatisfied or to request another intervention. Psychologists should evaluate patients before they have an operation, but psychological assessments cannot deal with the whole range of problems that might appear in plastic surgery for teenagers. I have tried in this article to give an insight into the problem from an ethical point of view and to propose the ethical matrix as a tool for guiding deciders in these cases.

Some might be sceptical about the influences that mass media and fashion are exercising over teenagers and might argue that every person has a history in the sense that his or her opinions and convictions are a result of the influences of society, family, education, culture. I agree that we cannot speak of coercion like the coercion suffered by people from certain communities, where girls are pressured to get fat (in Mauritania), to wear plates in their lower lips (in the Mursi tribe), to elongate their necks (Kayan population in Burma) and so on. However, people and especially girls are often pressured, in more or less subtle ways, to comply with ideals of beauty which sometimes involve dangerous and damaging procedures. Many beauty ideals are just exaggerations of some particular feature, like a slender waist, small feet, straight teeth and so on. These features are usually more pronounced in women and sometimes people tend to exaggerate them by virtue of a conviction that this exaggeration will make women more attractive. Breast implants might be such an exaggeration coming from a desire to highlight a feminine feature which suggests fertility. Ideals of beauty are usually hiding messages of fertility, because they all involve physical features that suggest health and youth. Of course, people requesting plastic interventions are not consciously thinking of fertility, they just want to look better. But what does it mean to look better when we know how beauty ideals change historically and how exaggerated they are sometimes? This is not a problem of aesthetics, of explaining what beauty is, but it is simply a problem that reveals some difficulties when dealing with persons who want to follow an ideal of beauty and to undergo plastic surgery for achieving this ideal. That is why a doctor may wonder if his/her teen patient is competent enough to be aware of the origin of his or her desire to change a part of his or her body and if he or she correctly appreciates the risks and consequences. A patient must understand the information he or she is given and must correctly appreciate what this information means for him or her. These two conditions are necessary in taking a rational decision and together with the rational decision constitute the competence of a patient. However, competence comes in degrees from a moral point of view. Only from the legal point of view patients are either competent or incompetent. This becomes the hard task for the doctor who must decide if the patient has a sufficiently

high level of competence, an important capacity in taking autonomous decisions. Finally, the decision to undergo plastic surgery must be an intentional one. There are no degrees in what constitutes intentionality and we can easily discern intentional acts from non-intentional ones. These three conditions of autonomy – competence, absence of controlling influence and intentionality – were examined and explained. The question one may ask is what should a doctor do and on what grounds when a patient is legally autonomous, but morally speaking, his/her degree of autonomy is not sufficiently satisfactory to allow them to undergo a plastic surgery? I tried to offer an answer in the second part of the paper. Thus, although a teenager may seem autonomous enough, from a legal point of view, to have an aesthetic intervention, a doctor may deem his or her level of autonomy unsatisfactory. For instance, suppose that a 16 year old patient wants to undergo a breast implant intervention. However, the doctor finds out that the patient desires the intervention because she wants to be a model but does not have the “suitable” dimensions for this career. (S)he suspects that the girl might further request other interventions in order to completely comply with an ideal of beauty proposed by fashion designers and the media. Although the psychological test requested by the doctor does not show problems that would raise great concerns, (s)he still has some doubts about the patient’s autonomy, because she is influenced, though not coerced, by others’ opinion about how her body should look. If the doctor refuses to operate her (s)he might be accused of not respecting the patient’s autonomy, but autonomy is not the only ethical principle that (s)he can appeal to. Refusing the intervention and thus breaching the patient’s autonomy, the doctor is not engaging in unjustified paternalistic behaviour, but (s)he is respecting the principle of beneficence, because he is doing what is good for the patient, i.e. is preserving the appearance of a part of the body whose change might result in an undesired psychological impact or whose change might not bring satisfaction. Of course, the point of view of teenagers is important and the ethical matrix that I developed and filled with the students participating in my workshop was a good occasion to learn more about teens’ opinion concerning plastic surgery.

Doctors, but also ethical counselors, parents, patients themselves, policy-makers, should pay more attention to the four principles of biomedical ethics – autonomy, beneficence, non-maleficence, justice – in favour of which I argued in this paper and they may use an ethical matrix to guide them in the decision-making process related to plastic surgery for teenagers. The consequences matrix that I provide in the last part of the article offers a guide to decision-making, without treating the problem exhaustively and without pretending to be a tool for eliciting decisions. It comprises the results of the debate that I had with students during the workshop and for a greater insight into the problem of plastic surgery for teenagers it has to be developed as a result of debates with more stakeholders, such as parents, doctors, schools, community, policy-makers.

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Bloggers, Journalists and Epistemic Responsibility: A Particular Type of Self-Regulation in the Romanian Online Media¹

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The passage from traditional press to digital media requires from professional journalists not only an improvement of their technological skills, but also a special kind of awareness of the new deontological challenges. Our attempt is to identify the novel dimensions of responsibility, accuracy and truthfulness in digital journalism and the “intellectual virtues” that online journalists should embody. We will identify these virtues starting from the criticism brought by Romanian bloggers (many of whom are or used to be journalists) to the lack of professionalism of online media journalists. Additionally, we will try to identify a particular type of “regulation” for the Romanian digital media, founded upon a collective critique developed in the blogosphere and focused on the inappropriate practices of the journalists that lack digital literacy and accuracy.

Introduction: “bloggers vs. journalists”, a fake problem

“Once they have been roused from their comfortable routine, Romanian journalists are at first confused (they don’t have a clue what’s going on with the blasted Internet), then they become downright aggressive only to give up in the end or quit their jobs”, the blogger “Zoso” (Vali Petcu) recently wrote in an analysis of the local online press.² The author of the best Romanian media blog in 2007³ criticizes the journalists’ lack of *savoir faire*, underlining the fact that these journalists post online materials which barely fit in the overly-crowded pages, use non-copyrighted photos and sign articles that plagiarize the content of other blogs – not to mention the lack of links to the sources, which is one of the capital mistakes of inexperienced online journalists: “Linking to the source story is actually not a bad thing because, even if I go to *FemaleFirst.co.uk*, I’m not going to stay there, because I am still one of

- 1 The article is part of a more extensive research project centring on the ethical challenges in online journalism, which is supported by the grant PN-II-RU-PD-2011-3-0037, financed by The National Research Council (The Executive Agency for Higher Education, Research, Development and Innovation Funding – UEFISCDI). The research is hosted by the Romanian Society for Phenomenology, The Institute of Philosophy “Alexandru Dragomir” in Bucharest.
- 2 Zoso, “Starea jurnalismului online românesc” [“The present state of affaires in Romanian online journalism”], 22 June 2011, <http://www.zoso.ro/starea-jurnalismului-online-romanesc-2011/> (all the Internet pages quoted below were accessed before 30 November, 2012).
- 3 The prize was awarded at the 2007 edition of RoBlogFest (<http://www.zoso.ro/about-me/>). In December 2012, Zoso had the traffic rank of 105 out of the Romanian sites (Alexa.com).

Mediafax.ro’s readers”.

Zoso’s opinions are not singular and they have been reiterated by several other Romanian bloggers, some of whom previously worked as journalists. On the other hand, current journalists, especially those who got most of their experience before the days of The Internet, continue to stand their ground. They refuse from the very beginning to be compared to bloggers. The value of the topics that bloggers broach can be described as “substandard”, according to one of the veterans of Romanian print media, Cornel Nistorescu, who is the current owner of the online newspaper *Cotidianul.ro*.⁴ The blogosphere, he says, “concentrates on trifles such as this guy has left this party, that politician’s wife has affairs or the like”. Very often, such topics are not only irrelevant, but also undocumented, Nistorescu points out. For him, a blog is just a personal diary, lacking any kind of news value or critical relevance.

It is, however, unfair to envisage the blogosphere as a bundle of superfluous information or simply as a new competitor to the traditional media. It is true that several of these personal sites, together with socialising networks (*Facebook*) and alternative information platforms (*IndyMedia*) have become instruments promoting civic responsibility, social criticism and alternative information, competing with the traditional press, which has a hard time adapting to the new wave of “citizen journalism”.⁵ However, the heights reached by citizen journalism (and here we have in mind especially the blogosphere centring on social, political and even media themes) should not be regarded as a threat to the classic or traditional media, but rather as a complement to those media. Thus, we should see blogging as “supplementing and interconnecting the work of professional journalists” while bloggers distribute and comment on the articles from the traditional media, broadening its audience.⁶

Without falling into the trap of the fierce dispute between bloggers and journalists and without succumbing to apocalyptic predictions such as “The Internet is going to kill all print newspapers”, we shall start from the premise that the digital media channels and platforms should be seen as a way of challenging the classic press to take the next step towards the 2.0 Web interactive culture.⁷ Judging from the perspective of media changes and technological convergence, as explained by Roger Fidler, the newspapers, the magazines, the TV and the radio will not be superseded

- 4 Cornel Nistorescu, “România, între bloggeri și jurnaliști” [“Romania, between bloggers and journalists”], in *Cotidianul.ro*, 27 April 2010 (<http://www.cotidianul.ro/romania-intre-bloggeri-si-jurnalisti-113321>).
- 5 In a standard definition, “citizen journalism” refers to “any contribution to discussion in the public sphere, whether in the form of simple information, syntheses, reporting, or opinion” (Lewis Friedland and Nakho Kim, “Citizen Journalism”, in Christopher H. Sterling, (ed.), *Encyclopaedia of Journalism*, Los Angeles, Sage Publications, 2009, p. 297).
- 6 Stephen D. Reese et al., “Mapping the Blogosphere. Professional and Citizen-Based Media in the Global News Arena”, *Journalism*, vol. 8(3), 2007, p. 258.
- 7 Forged by Tim O’Reilly, the concept of Web 2.0 “includes a social element where users generate and distribute content, often with freedom to share and reuse”, such as in YouTube or Wikipedia (Glen Creeber and Royston Martin, “Introduction” in *idem*, (eds.), *Digital Cultures. Understanding New Media*, New York: Open University Press, p. 3).

by the new media, but reintegrated in the digital space. The identity of the source, its credibility and its editors' brand name will continue to matter in the virtual space.⁸ No matter what publication medium the future news journals will belong to, their core duties remain the same – providing responsible information to the public, a strong reaction to abuses and liberties-or-life-threats, and the support of opinion exchanges and public discourses.⁹ At the same time, digital journalists will have to pay increased attention to the values specific to interactive journalism, in order to be able to make a genuine difference in the realm of alternative sources of information (blogs, advocacy and citizen journalism sites, news aggregators).

In order to understand what the new ethical and professional points of reference in online journalism are and how can these be instilled into media professionals, our article will attempt to solve two interrelated themes: A) the significance of “intellectual virtues” in online journalism and B) the importance of the Romanian blogosphere as a watchdog for professional journalism.

A) Our first hypothesis is that the digital journalist's values/virtues are guided by truth, transparency and credibility in front of the public. Thus, we will show that the professionalization in the online media involves increased emphasis on the intellectual virtues (accuracy, curiosity and perseverance, digital literacy), which can be subsumed by the concept of “epistemic responsibility”, understood as the “central [intellectual] virtue from which all others radiate”.¹⁰ The current emphasis on the aforementioned virtues is due precisely to the fact that, among those standards of excellence that are inherited from the classic press (good writing, depth inquiry, care for the public interest), those that centre on accuracy¹¹ and reliability¹² are the most threatened in the context of the business pressures and of the fierce competition among online newspapers which tend to reciprocally “cannibalize” their genuine content.¹³

8 Roger Fidler, *Mediamorphosis. Understanding New Media*, Thousand Oaks, CA: Pine Forge Press: 1997, p. 257-258.

9 Ibid.

10 Lorraine Code, “Toward a ‘Responsibilist’ Epistemology”, in *Philosophy and Phenomenological Research*, vol. 45, no 1, Sept. 1984, p. 34.

11 Commenting on the standards for excellence (the “virtues”) in online journalism, David A. Craig underlines the importance of speed and accuracy in breaking news: “When online writers and editors work quickly to produce multiple stories per day in multiple forms while holding strictly to accuracy and seeking depth, they achieve a kind of newness that raises the bar for what immediate reporting can provide for an audience” (David A. Craig, *Excellence in Online Journalism*, Thousand Oaks, Ca.: Sage, 2011, p. 34).

12 The lax verification or even the conflicts of interest are very dangerous dimensions at a time when journalism “requires higher standards of intellectual reliability to shore up its credibility and to compensate for organizational pressures to dilute its standards” (Sandra L. Borden, *Journalism as Practice: MacIntyre, Virtue Ethics and Press*, Hampshire: Ashgate, 2007, p. 86).

13 Cf. Angela Phillips, “Old Sources: New Bottles”, in Natalie Fenton (ed.), *New Media, Old News. Journalism & Democracy in the Digital Age*, Los Angeles: Sage Publications, 2010, p. 96.

B) Our second hypothesis is that, in Romania, highlighting the “intellectual virtues” of digital journalists is due especially to the criticisms made by the local blogosphere. While one cannot talk about moral-philosophical conceptualisations made by these Romanian bloggers, the critical remarks that these bloggers direct against the errors in online journalism can be seen as an unprecedented kind of “self-regulation” in the Romanian media. Thus, the adaptation of journalists to the ecology of digital communication and their professional growth could be encouraged and, partly, facilitated by the much-criticized bloggers.¹⁴ Often acting as a useful mirror for journalists, the bloggers play an unprecedented function of regulation within the online medium, adopting “the role of watchdogs of the more mainstream, established news media”.¹⁵ While it is not an obvious high-impact trend, this critical initiative of the new watchdogs of the press is useful in the Romanian environment, where the written press has long lacked enforcement of deontological rules.¹⁶

These two hypotheses will be addressed concomitantly, only to be reprised separately in the final section. Besides an attempt to summarize the opinions on the media of the most widely read bloggers in Romania, our article will rely on the application of virtue ethics to the media (D.A. Craig, S.L. Borden), on the observations in virtue epistemology regarding the “intellectual/epistemic virtues” (L. Code), and on the analyses centring on the professional environment of the digital journalism in Romania.¹⁷

The development of the blogosphere: From “rough” information to a debate space

The terrorist attacks of 9/11 are often seen as a breakthrough moment concerning the evolution of new media. Those who witnessed the collapse of the Twin Towers posted terrifying images online shortly after, images which were later used as

14 The journalists' disparagement of bloggers is also present in Western countries, where professional journalists claim that blogs are badly written, egocentric, subjective and amateurish - cf. Joyce Y.M. Nip, “Exploring the second phase of public journalism”, in *Journalism Studies*, 7(2), 2006, p. 212-236.

15 Laura Hendrickson, “Press Protection in Blogosphere: Applying a Functional Definition of ‘Press’ to News Web Logs”, in Mark Tremayne (ed.), *Blogging, Citizenship and Future of Media*, New York: Routledge/Taylor & Francis Group, 2007, p. 187.

16 Cristian Ghinea and Alina Mungiu-Pippidi, “The case of Romania”, in the Mediadem Consortium report *Media policies and regulatory practices in a selected set of European countries, The EU and the Council of Europe*, October 2010, p. 327.

17 See Natalia Vasilendiuc and Peter Gross, “New Technology, new professional practices: A study on Romanian new media”, in *Comunicación Y Sociedad*, vol. XXV, num 1, 2012, p. 59-83; Marius Dragomir and Mark Thompson (eds.), *Mapping Digital Media: Romania*, London: Open Society Foundation, 2010; Romina Surugiu and Raluca Radu, “Introducing New Technologies in Media Companies from Romania, Portugal and Cyprus. A Comparative Approach”, in *Revista Română de Jurnalism și Comunicare*, 3(4), 2009, p. 93-102.

first-hand sources by newspapers and TV networks. Live information and moving sequences were offered at a rapid pace, sometimes as minute-by-minute news bulletins. The terrifying American tragedy “led to the emergence of an alternative space of communication, especially since the traditional media were unable to fulfil the global need of information”.¹⁸ This alternate information channels rose “rapidly offering correct and credible information” on several subsequent tragedies – the Katrina Hurricane, the Asian *tsunami* and the London or Spain terrorist attacks.¹⁹ Moreover, besides their informative value, the blogs became arenas of debate on the responsibility and possible solutions to the consequences of those tragedies. Although an important part of the alternative news media has been appropriated by “consumerism” (advertising and branding), The Internet contributes, at the same time, to the democratization of information and to a widening of the public debate arena. New media allows the creation of a dialogue space through forums and discussion groups and accelerates the mobilisation of different opinions.²⁰

A similar development took place in the Romanian blogosphere.²¹ Born on September 16, 2001, with a note on the disastrous situation of Romanian roads (on troniublogspot.com), blogging was taken seriously only in 2003, when it was tested by several local pioneers coming either from journalism (Brăduț Ulmanu, with *Jurnalismonline.ro*) or from the entrepreneurial side (Bogdan “Bobby” Voicu, who subsequently became *Community Manager* for *Yahoo!Romania*). From 2005, there is a significant rise of those blogs written by young people who are inexperienced writers, followed in 2006 by the online presence of veterans in the fields of journalism, technology or publicity. Thus, blogging become a trend, “sparking debate over whether blogs would replace traditional media”.²² In this manner, the specialized blogs are born, which will bring credible information and will represent an essential alternative to the traditional media that lean more and more towards the tabloid genre, which is devoid of responsibility. The new media became a considerable force and a regulating principle of society in an age where “the classic media have remained somewhat aimless – not only in Romania – because of its opulence that suppresses the audience's concern for the common interest and the future of the nation, in contrast to the audience's crave for entertainment”.²³

The alternative media (blogs, socialising networks, discussion forums) thus represent more than a bunch of diary impressions, accompanied by food recipes and amateur photos. Since the private life elements and the “rough” information on public events moved mainly to the socialising networks (Facebook, Twitter), the

18 Dorina Guțu-Tudor, *New Media*, second edition, Bucharest: Tritonic, 2008, p. 39.

19 Ibid., p. 40.

20 Rémy Rieffel, *Sociologie des médias*, Paris: Ellipses Publishing, 2001.

21 Our short history is based on the synthesis the media analyst Iulian Comănescu makes in his book *Cum să devii un Nimeni [How to Become a Nobody]*, (Bucharest: Humanitas, 2009, pp. 135-136) and in his article “The collective article on the first Romanian blog” (*Dilema veche*, 15 December 2007: <http://www.dilemaveche.ro/sectiune/mass-comedia/articol/articol-colectiv-despre-primul-blog>). Comănescu is also blogger and editor-in-chief of *The Industry media* magazine.

22 C. Ghinea and A. Mungiu-Pippidi, *op. cit.*, p. 320.

23 I. Comănescu, *Cum să devii un Nimeni*, p. 147.

blogosphere has offered more room for debate, for social criticism and alternative information, necessary ingredients of the democratic public sphere, of a dialogue space which is not dominated by economic interests and the lobbies of the media trusts.²⁴ In the same manner as abroad, the blogs in Romania too, no longer place emphasis on the dimension of diaries but on that of debate, evaluation and comment.²⁵

The internet generation and the “antibody-blogs”

“We don’t like to watch the news on TV”, the Internet-savvy young people say; the digitally-educated generation has been fed, from a very early age, on publicity and marketing ads and has thus learned to be suspicious of the messages laced with tabloid exaggeration or economic interests. “Honesty, transparency and authenticity are crucial if you want to get through to the Net Generation”.²⁶ This is the context in which independent blogs sometimes come to enjoy as much credibility as traditional media, which are now more often than not met with “the suspicion of corporate control”.²⁷

More and more people choose alternative sources of information, often preferring a blog or an online local newspaper to the national journals, which must have lost some of their relevance and credibility.²⁸ Moreover, the blogosphere hosts an increasing number of specialists coming from various areas, who do not seek notoriety, but only want to counteract the distortions of the truth often perpetrated by the press. Bloggers with legal training often correct the tabloid news referring to laws and penalties, medical experts (for example PharmaGossip) fight against the publicity campaigns of the pharmaceuticals industry, while other blogs often try

24 David Beers, “The Public Sphere of Online, Independent Journalism”, in *Canadian Journal of Education*, 2006, pp. 109-130.

25 One has to notice that, in 2009, only 35% of the Romanians read online newspapers (while in the US and Germany, there were twice as much such readers) and only 15% read blogs weekly. In 2012, the Romanian online audience increased significantly by up to 73% (see Sorin Adam Matei, “50% din români ajunge pe Net” [“50% of Romanians surf the Net”], published on *Pagini.com*, September 8 2009, at <http://www.pagini.com/blog/2009/09/08/romanii-ajung-pe-net-din-ce-in-ce-mai-des-unde-ii-asteapta-mircea-badea/>, and Eurostat report “Internet Access and Use in 2012”, at http://epp.eurostat.ec.europa.eu/cache/ITY_PUBLIC/4-18122012-AP/EN/4-18122012-AP-EN.PDF).

26 Don Tapscott, *Grown Up Digital: How the Net Generation is Changing your World*, New York: McGraw Hill, 2008, p. 285.

27 Deni Elliott, “Essential Shared Values and 21st Century Journalism”, in Lee Wilkins and Clifford G. Christians (eds.) *The Handbook of Mass Media Ethics*, New York / London, Routledge, 2009, p. 36.

28 Reading blogs is also a part of the new “monitorial” reading style: people “scan all kinds of news and information sources – newspapers, magazines, TV shows, blogs, online and offline social networks, and so on – for the topics that matter to their personality” (Mark Deuze, “Journalism, Citizenship, and Digital Culture”, in Z. Papacharissi, (ed.), *Journalism and Citizenship: New Agendas*. New York: Lawrence Erlbaum/Taylor and Francis, 2009, p. 18).

to give a clearer picture of the local administration's activity (MayorWatch, for example, is centred on the London administration).²⁹ When asked why they have chosen this form of "citizen journalism", the authors of this type of blog invariably answer that they only want to "correct" the classic press information. "There would not be a need for bloggers like me if the journalists did their job properly", says an administrator of one of these professional blogs.³⁰

It is hard to say to what extent the Romanian blogosphere includes such professional sites, meant to correct the inaccuracies of the press. While this question remains open for further research, we can, however, identify a number of blogs, often owned by persons who worked as journalists and who are able to regard the press, especially the online kind, in a critical manner. *BlogulDeMedia* for example talks about the "inherent blunders" in this area.³¹ *ReporterVirtual*, another Romanian media blog, often broaches topics which concentrate on the interface between management and the political dimensions of journalism, hoping to restore the "lost dignity" of the press.³² There is a long list of well-known blogs, which refer, in one way or another, to the press (*StareaPresei*, *PaginaDeMedia*, *Tolo.ro*). What we are interested in is the fact that blogging journalists have already carved out for themselves, in a spontaneous manner, a place that hosts debates on the topic of the Romanian press (classic and digital). "Zoso's" criticism of the journalists' inability to adapt to the requests of the online medium (see above) exemplifies the type of reactions awakened by the errors made by classic journalists in their passage to digital media.

It is by that kind of bloggers' criticism that "the new media become the only feedback mechanism of the *classic* or *old* media" and the blogs become the "natural antibodies of democracy".³³ Even if this label widely refers to the public space, we believe that it could be also appropriate for the micro public space inhabited by journalists and bloggers, since the latter are regarded as "media watchdogs": "they employ the blogosphere to draw attention to issues marginalized or ignored by the mainstream media".³⁴ This special type of "regulation" in the new media, consisting of opinions and criticism by the blogosphere directed against the press (or the other way round), proves especially important for the functioning of the digital press. These are reasons why we believe this phenomenon is worth clarifying, instead of being seen as a mere symptom of the fierce debate between bloggers and journalists:

- Compared to other professions, there is no "job description" for journalists that is subject to well-defined regulation; in other words, there are no clear standards that refer to specific areas of competence, except for a variable

29 Nick Couldry, "New Online News Sources and Writer-Gatherers", in Natalie Fenton (ed.), *New Media, Old News. Journalism & Democracy in the Digital Age*, pp. 142-144.

30 Ibid., p. 144.

31 Cf. <http://bloguldemia.ro/despre/>.

32 Cf. <http://www.reportervirtual.ro/about>.

33 I. Comănescu, *Cum să devii un Nimeni*, p. 149.

34 Zizi Papacharissi, "The Citizen is the Message. Alternative Modes of Civic Engagement", in idem, (ed.) *Journalism and Citizenship: New Agendas*. New York: Lawrence Erlbaum/Taylor and Francis, 2009, p. 37.

set of editing techniques and of "a body of knowledge which legitimises the journalists' mission and social responsibility".³⁵

- Although Romania has possessed a unified Professional Ethics Code since 2009, followed by the organizations that represent the written press, this Code has not been internalized and enforce in an adequate manner by the journalists or by those in charge.³⁶
- There is no ethical organization that specializes in the regulation of the written press (print or online),³⁷ which would be an institution having a similar role to that of the National Audio-visual Council which takes care of the Romanian public TV and radio networks.
- The bloggers that have a manifest interest in the regulation of the press have become notorious in the sphere of the new media.³⁸

What bloggers demand: Accuracy, transparency, digital expertise

The age of "believe me, but it is as I say", that is, of the epistemic authority of the journalist, is at an end. The growing multitude of the media channels and the suspicious attitude of the "Net Generation" have given rise to a new attitude, which can be summed up by the principle: "Be sceptical!" This means that we, the readers, don't have "to take for granted the trustworthiness of what we read, see or hear from media of all kinds, whether from traditional news organizations, blogs or online videos".³⁹

Bloggers are undoubtedly the most demanding, critical and "sceptical" readers of the professional media, because they compete with news professionals and

35 Mihai Coman, *Introducere în sistemul mass-media [Introduction to the Media System]*, third edition, Iași: Polirom, 2007, p. 240.

36 A major concern for the Romanian press, identified in 2011 by the Mission of the European Federation of Journalists (EFJ), is the lack of a "well established and recognized mechanism of self-regulation in the media"; that is why EFJ recommends the journalists' Unions to "promote the Professional Ethics Code" and to create "a debate about the importance of a new approach to media accountability and ethics" (*Journalism in the Shadows: The Challenge for Press Freedom in Romania*, Report of EJP Mission, 3-4 February 2011, p. 14 – accessible online at <http://europe.ifj.org/assets/docs/215/123/229d0d7-93d7a7b.pdf>).

37 Ibid.

38 In November 2012, the monitoring blog *ZeList.ro* included in the Top100 of famous Romanian blogs, the blog *Tolo.ro* belonging to Cătălin Tolontan, editor-in-chief for "Gazeta Sporturilor", the aforementioned site *Reporter Virtual*, the opinion aggregators *VoxPublica* and *Contributors*, including notorious senior editors, the political blog *Sutu.ro* of Cristi Șutu, former senior editor of several newspapers, *Orlando.ro*, the blog belonging to Orlando Nicoară, the head of the Mediafax Group, and the blog *Ciutacu.ro* of the former editor-in-chief of the national newspaper *Jurnalul Național*. All these blogs frequently post information, opinions, evaluations and debates on the topic of the Romanian press.

39 Dan Gillmor, "Toward a (New) Media Literacy in a Media Saturated World", in Z. Papacharissi, (ed.), *Journalism and Citizenship: New Agendas*. New York: Lawrence Erlbaum/Taylor and Francis, 2009, p. 9.

continuously challenge the “authority” of traditional media⁴⁰. But this challenge to authority can also be seen as a chance to raise the standards of excellence of the online media. As the famous journalist Alex Jones stated, “accountability is the greatest thing that blogs are bringing to journalism”.⁴¹ As we will show below, the main values and virtues that bloggers demand from journalists are those belonging to the “intellectual” realm: truth, credibility, transparency, honesty and trust. In the struggle against alternative sources, credibility and the reader’s trust are the survival chance of the traditional media which seeks to take its place among the new media. Here are some examples in this respect:

Accuracy and fact checking. Some years ago, one of the most popular Romanian bloggers, musician and actor Tudor Chirilă (who is an exception compared to the other bloggers who write about the media, since he does not have press experience) conducted an experiment meant to demonstrate the incompetence of the so-called “copy-paste” journalists, who, in haste, mechanically copy the news, without even minimally checking them. Chirilă wrote on his blog⁴² the story of how he ran stark naked in the city centre of Bucharest. Shortly after, *Ziare.com* (a news aggregator) took over this item of news as such, without prior checking. After Chirilă admitted this was a hoax⁴³, *Ziare.com* claimed that the information should not be checked if it was directly taken from the person involved. The way in which the news aggregator above chose to defend itself reveals the general situation of Romanian journalists, who are more into fast selection among multiple sources (blogs, mobile conversations, chats, RSS) and much less concerned with digging for information. In Romanian online journalism, “privileging speed over thorough fact checking” is an unfortunate outcome of the digitization of the journalists’ work.⁴⁴

Digital expertise. At the beginning of the article, we quoted “Zoso’s” observations concerning the inability of online journalists to organize the content of a webpage. The blogger and former editor-in-chief of the national newspaper *Adevărul* Mihnea Măruță also talks about the way in which bloggers know how to tell stories that “warm the readers’ hearts”, something that traditionally-trained journalists need to learn: “Now you can add video materials, texts, links to the sources you used, which is, over all, more than you were able to do in print, where you could at most add a photo gallery”.⁴⁵ The accession of the press to the online

medium requires journalists to become adequately familiar with the instruments and “ecology” of the digital media. Journalists have to adapt their writing style (which should be shorter and more direct), to effectively use search tools, to be able to edit video and audio materials. All is part of a “digital expertise” that is necessary in order to improve the quality of online journalism.⁴⁶ Unfortunately, Romanian online journalists had a harder time adapting to the new media than bloggers, mainly because, in Romania, the digitization of the media began later than in the countries of Western Europe, but also because Romanian media companies “did not organize coherent training programs for the use of new technologies”.⁴⁷

Transparency and integrity. “The blogosphere’s golden rule” is to always quote sources and also the reasons for which you write, the principles you abide by and the means by which you came by the sources you offer.⁴⁸ In that sense, journalist, blogger and “green” activist Mihai Goțiu “denounces”, on the blog aggregator *VoxPublica*, a number of ads that were presented in the guise of news on the site of *Realitatea TV* (both outlets are part of the same media group – *Realitatea Media*). The “advertorials” were advocating a questionable gold mining project in Romania.⁴⁹ The lack of transparency/integrity can be explained by the mentality of the journalists of the 2000s generation, who are known to give in to the business demands of the media trusts they belong to. The digital medium is used by Romanian online journalists for “increasing the array of money-making vehicles to the detriment of increasing the platforms for socially responsible media”.⁵⁰

The list containing the bloggers’ critical remarks directed against online journalists could go on – from plagiarism (“copy-paste” journalism) to unacknowledged corrections (corrections introduced directly inside the body of the article, instead of providing an errata), from the lack of interaction with readers to conflicts of interests. All these standards are necessary to ensure the credibility of online journalism, which has been challenged by bloggers, and to offer valid and useful information to the public. Besides the care for the community’s welfare, in the context of “the pressure of immediacy”, online journalists must combine the concern for accuracy, the spirit of initiative and the inquisitiveness and, last but not least, the ability to discern between the real knowledge of hoaxes and gossip.⁵¹

In the last section, we will not only attempt to summarize the most important abilities or “virtues” of the journalists that live in the Web 2.0. age, but also investigate in what way the criticism brought by blogging journalists could partly

40 See Stephen D. Reese et al., *op. cit.*, p. 259.

41 Quoted by Rebecca MacKinnon in her report of the press conference “Blogging, Journalism & Credibility. Battleground and Common Ground” which took place in 2005 in Harvard (http://cyber.law.harvard.edu/publications/2005/Blogging_Journalism_Credibility).

42 Tudor Chirilă, “300. Erată” [“300. Erratum”], May 15, 2008 on *Tudor Chirilă.blogspot.com* (<http://tudorchirila.blogspot.com/2008/05/300-erata.html>).

43 Since Internet hoaxes are more and more frequent, it is no wonder that the updated variant of the ethical code of the Canadian Association of Journalists stipulates: “We consider all online content carefully, including blogging, and content posted to social media. We do not re-post rumours – see *CAJ Ethics Guidelines*, <http://j-source.ca/article/caj-ethics-guidelines>.”

44 Marius Dragomir and Mark Thompson (eds.), *op. cit.*, p. 43.

45 Mihnea Măruță, “Revoluția biografică” [“The biographical turn”] communication presented at the third edition of the debate series “Din On în Off” organized by the blog *TVdece.ro* in Cluj on October 27, 2011. See the video recording on <http://mihneamaruta.ro/2011/10/28/>

revolutia-biografica/.

46 Dominic Boyer, “Digital Expertise in Online Journalism (and Anthropology)”, in *Anthropological Quarterly*, volume 83(1), 2010, p. 87-89.

47 R. Surugiu and R. Radu, *op. cit.*

48 Cecilia Friend and Jane B. Singer, *Online Journalism Ethics. Traditions and Transitions*, M.E. Sharpe, New York, p. 123.

49 Mihai Goțiu, “MythBusters la Roșia Montană” [“MythBusters joining Roșia Montană”], published on *VoxPublica* (<http://voxpublica.realitatea.net/politica-societate/mythbusters-la-rosia-montana-noua-avalansa-de-minciuni-publicitare-de-la-rm-gc-chiar-pe-aici-pe-realitatea-net-68940.html>).

50 N. Vasilendiuc and P. Gross, *op. cit.*, p. 80.

51 D.A. Craig, *op. cit.*, p. 21.

support the ethic and professional regulation of the online press. We will try to examine in what way, values and principles that are specific to digital journalists can be inculcated in innovative ways without appealing to restricting and politically sensitive laws.

The ethics of intellectual virtues and its regulation by the blogosphere

Epistemic responsibility. As a function of financial and temporal limitations, journalism was defined as a hastily written history.⁵² The novelty, by no means easy to accept, of the new media is that now contents are no longer perishable, but can be accessed (almost) any time and (almost) anywhere. While in the past, a radio show was lost into thin air once it was over and paper soon found its way into the garbage bin, in the online medium, the radio show can now become a podcast and the edition of the paper that was published a month ago becomes quasi-synonymous with the site of the same newspaper. This is what prompts the update or the revision of the materials which appear in online newspapers once new and relevant information has appeared on the same topic. Metaphorically speaking, if the classic press suffered from an “attention deficit” – which meant that an item of news was readily abandoned and its consequences seldom monitored, due to the prejudice that the public would lose interest soon after, the new media seem to suffer from the reverse tendency, an “obsessive-compulsive” one: the blogger (but also the digital journalist) comes with “a linear discourse, intertwined cases and stories, which repeat themselves and become more complex with each passing day”.⁵³ Due to the possibility of completion and subsequent adjustment of the situation, the so-called hastily written history should become, in The Internet age, a cumulative history, which grows more and more accurate and credible.

From the point of view of the necessity to revise and complete the news, online event reporting has begun to resemble scientific research, since it requires the same type of intellectual virtues. In the case of lab investigations, besides physical skills, such as visual acuity (which is a required “sensorial” virtue), the stress falls on the abilities that pertain to determination and inquisitiveness: a sharp spirit of observation, an open mind from an intellectual point of view (the ability of accepting that your hypothesis is wrong), the care for checking data, perseverance (a continual actualization of your knowledge). All these skills, which guarantee professional excellence in the field of research, contribute to “our *reliability as agents*; they enable us to deploy reliable faculties and mechanisms to good effect”.⁵⁴ These

52 Clifford G. Christians et al., *Media Ethics: Cases and Moral Reasoning*, ninth edition, New York: Pearson, 2011.

53 I. Comănescu, *Cum să devii un Nimeni*, p. 146. An example in this respect is the temporary addition in the digital layout of Romanian newspapers (*Adevărul*, *Evenimentul Zilei*) of new sections, besides the traditional ones (Politics, Society, Art & Culture, Sport) centring on the report of more complex events or stories stretching on several days (a famous film festival, a series on the recent history of Romanian Communism, etc.).

54 Christopher Hookway, “How to be a Virtue Epistemologist”, in M. DePaul and L. Zagzebski (eds.), *Intellectual Virtue. Perspectives from Ethics and Epistemology*, Oxford: Clarendon

“intellectual virtues” are not required only in the case of physicists or biologists. They should also be shared by another type of “agent”, who is also in pursuit of the truth, namely the journalist. In the case of the online journalist, perseverance (the news update) and a preoccupation for an attentive source check (from blog gossip to fake statements) acquires new dimensions which did not characterize classic journalism, where the sources (faxes, phone calls, press conferences) were usually more reliable.

Without denying the importance of courage, of honesty, impartiality, the search for justice or involvement in the community’s causes (for the greater good) or of the respect for tradition,⁵⁵ we believe that the passage from classic journalism to the new media requires, above all, the strengthening and training of two professional virtues that are separate yet intertwined: on the one hand, the loyalty towards one’s public (a virtue that has become increasingly necessary in the context of an increased interactivity between journalists and readers, as readers are able to post their opinions at the end of the online article), and on the other hand, what we could call “epistemic responsibility”.⁵⁶ The latter actually comprises several intellectual “sub-virtues”, some of which were already discussed in the previous sections. The journalist’s scepticism of the possible “traps” set by politicians or by those in the advertising business, their modesty (the availability to correct their reports), but also the honesty (transparency) and the credibility offered by the accuracy and attentive information check⁵⁷ are all intellectual virtues essential to any journalistic genre, but, more than ever, especially for the online media. All this can be placed in the realm of “epistemic responsibility”, in the sense of an ability to discern between knowledge and rumour/opinion and to delimit the information which is worth thorough research. In the terms of virtue epistemology (L. Code), “epistemic responsibility” (synonymous with Aristotelian “wisdom”) presupposes an ability to realize how serious the effort of inquiry should be “before it is reasonable to claim knowledge” and “what cognitive ends are worth pursuing” in our own interest, but especially in the common interest of an entire community.⁵⁸

The stress on intellectual virtues is translated in the case of journalism as an extra degree of professionalization. The improvement of the quality of the journalist’s work coincides in this case with an ethics of “intellectual virtues”. Along with Lipovetsky, we state that addressing the essential questions and resisting rumour and manipulation are skills enacted not only due to a “clear conscience”, but mainly due to “professional intelligence”. This is acquired above all due to an

Press, 2003, p. 188.

55 Dan Gillmor, *We the Media. Grassroots Journalism by the People for the People*, Sebastopol, Ca.: O’Reilly Media, 2004, p. 134.

56 We take over this concept from an approach on the ethics of journalism based on virtue ethics. A former journalist, but also a specialist in Alasdair MacIntyre’s philosophy, Sandra L. Borden uses the term “epistemic responsibility” in order to refer to a group of intellectual virtues, which range from honesty and credibility to the willingness to provide the information necessary for the flourishing of the community (Sandra L. Borden, *Journalism as Practice: MacIntyre, Virtue Ethics and Press*, ed. cit., p. 50 et sq.).

57 For the list of the journalist’s intellectual virtues see S.L. Borden, *op. cit.*, pp. 17-20.

58 L. Code, *op. cit.*, p. 41.

“intellectualist ethics” concerned with professionalization, the pursuit of truth and the curiosity for the world.⁵⁹

A substitute for ethics committees. The interesting issue, at least for Romania, is that the intellectual values and virtues of online journalism, which reside within the perimeter of epistemic responsibility, are taken into account by bloggers rather than by an ethics code or by ethical boards. The 2009 Professional Ethics Code, adopted by the Convention of the Media Organizations in Romania, includes chapters referring to checking information, to plagiarism or information corrections, but it was not updated (to the end of 2012) to refer to online journalism.⁶⁰ Even if it stipulated that the rules and principles of this code refer to the online medium as well (art. 1.3), as well as for the written press (print and online), there is no ethical and national council meant to enforce the conduct code, such as, for example, the Press Complaint Commission in the United Kingdom. Thus, the self-regulation of the Romanian press cannot function properly.⁶¹

This is why we believe that the debates and criticisms that have appeared in the blogosphere on the level of the professional press, concerning not only the journalists, but also the abusive managers and politicians who manipulate the press, are meant to compensate for certain gaps regarding the institutionalization of media ethics; deontological codes have not been properly internalized and the owners of press trusts interfere in the editorial process or abusively fire those who have become an encumbrance. There are no ethical committees for the written press and last, but not least, there are no *ombudsmen* in the private trusts who would listen and react to the public's criticism. Without being a separate institution and without representing the will of the people, blogging journalists appear as a *sui generis* instance placed somewhere between the press councils, made up of experienced journalists who daily analyse possible code violations for significant newspapers, and the citizen associations that lodge complaints or write letters deploring the unethical dealings of the press.⁶²

Thus, beyond the belligerent paradigm which opposes bloggers to journalists, we believe that, within the Romanian context, the critical attitude coming from the blogs that centre on the criticism of journalism is a positive thing, which can contribute to a better awareness of the importance of credibility and veracity in the online media, where loyalty to an increasingly discriminating public is the key to the survival of professional journalism. Naturally, the criticism on the themes of ethics and professionalization issued by watchdog bloggers does not replace

59 Gilles Lipovetsky, *Le Crépuscule du devoir. L'éthique indolore des nouveaux temps démocratiques*, Paris: Gallimard, 1993.

60 If we look at the *Ethics Guidelines* of the Canadian Association of Journalists (CAJ), for example, we will see that it includes a final chapter focusing on the rules of online journalism and on the way in which principles apply in this context (see *CAJ Ethics Guidelines*, published on <http://j-source.ca/article/caj-ethics-guidelines>). The Professional Ethics Code for the Romanian Press can be found at <http://www.organizatiimedia.ro>.

61 See C. Ghinea and A. Mungiu-Pippidi, *op. cit.*, p. 329.

62 Regarding the precise role of these instances for the traditional media, see Claude-Jean Bertrand, *Media Ethics and Accountability Systems*, New Brunswick, NJ: Transaction Publishers, 2000, pp. 107-111.

ethical commissions, but can be of genuine help in the environment of Romanian journalism.

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