



*Reason, Emotion and Human Rights**

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ABSTRACT

The purpose of this text is to present and assess the arguments that Ernst Tugendhat uses to support two of his theses. The first thesis states that Kant's categorical imperative is the only possible principle among all of the non-transcendental moral principles existing. The second thesis states that, based on that principle, it is possible to provide with a solid foundation for human rights. We shall discuss that Tugendhat's criticism to utilitarianism, which he considers, the most relevant adversary in his search for an ethical plausible principle, is not as convincing as he supposes and that the revised notion of categorical imperative which he proposes is, in the end, equivalent to an utilitarian principle, more exactly, to the principle of equal consideration of interests formulated in 1980 by Peter Singer. Though Tugendhat admits the principle is utilitarian, he denies to acknowledge the scope of such principle regarding the defence of animal rights, abortion and the liability to help. Finally, we shall study how Tugendhat deals with the topic of human rights in view of Rorty's thought. In order to show the appeal to moral feelings, he overturns the need to find the basis for such rights. This fact, also shows that the most commendable ethical proposal is utilitarianism, which is in line with Rorty's thought.

KEYWORDS: moral justification, moral sentiments, human rights, anti-realism, anti-foundationalism, solidarity, utilitarianism, the categorical imperative, fallibilism, pragmatism.

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Though reasoning when assisted and improved, is good enough to train us about the tendencies of the qualities and actions and lets us know if they're pernicious or useful, it is not, on its own, quite enough to cause censorship or moral approval. Utility is just the tendency towards a certain end and if such end were totally indifferent, we would feel the same unconcern towards the means. It is required then, that an emotion is manifested for the useful tendencies to prevail upon the pernicious ones. Such emotion cannot differ from one in favour of happiness for the human being and for resentment for its misfortune, since these two are the final goals that virtue and vice tend to promote. Therefore, reasoning teaches us about the several tendencies of actions and humanitarian emotion favours those which are useful and beneficial.

HUME

Introduction

The purpose of this text is to present and assess the arguments that Tugendhat uses to support two fundamental theses. The first thesis states that Kant's categorical imperative is "the most commendable, the only possible principle among all of the non-transcendental moral principles existing."¹ The second thesis states that, based on that principle, it is possible to provide with a solid foundation for human rights.

We shall discuss that Tugendhat's criticism to utilitarianism, which he considers, the most relevant adversary in his search for an ethical plausible principle, is not as convincing as he supposes and that the revised notion of categorical imperative which he proposes is, in the end, equivalent to an utilitarian principle, more exactly, to the principle of equal consideration of interests formulated in 1980 by Peter Singer. Though Tugendhat admits the principle is utilitarian, he

denies acknowledging the scope of such principle regarding the defence of animal rights, abortion and the liability to help². Finally, we shall study the way Tugendhat deals with the topic of human rights in view of Rorty's thought. In order to show the appeal to moral feelings, he overturns the need to find the basis for such rights. This fact also shows that the most commendable ethical proposal is utilitarianism, which is in line with Rortian thought.

From causes to reasons

One of the fundamental issues of ethics has to do with the matter or moral motivation, that is to say, with the fact that in ethics it is not quite enough to define what is right or good but, it is also mandatory to explain as well what motivates people to do good. For Tugendhat, this problem is closely related with the problem of the reasons to act. As we shall see, Tugendhat states a difference

1. TUGENDHAT, E. *Lecciones de ética*. Barcelona, Gedisa, 1997, p. 299.

2. SINGER, P. *Ética práctica*. Cambridge University Press, Londres, 1993, capítulos 2 a 8.



between reasons and motives, and the latter are never reasons to act. A proper theory of moral motivation must leave space to reasons, which, in the end, will make way for the principle of moral indictment. This matter will be analysed first.

Tugendhat begins by examining Adam Smith's theory of motivation which states that moral motivation has to do with being approved justified from the point of view of the impartial observer.³ In fact, as human beings, we want to be loved and liked by nature and we also want to be approved in our actions and ways of being. Tugendhat admits from Smith's theory that a reason different from empathy and the need to have a natural empathy are not necessary to explain moral motivation and even to consider it as "the most unmistakable reason to be willing to be considered as part of a moral community and also, to be willing to act morally."⁴ In spite of that, Tugendhat does not want to commit to an "anthropological dogmatism" and suggests, instead, focusing on the conceptual connections related to the matter rather than supporting that a righteous description of human nature is being done. For example, if someone wants to be loved, therefore, he-she wants to be approved too. It is even possible to declare that "...it is also relevant to be liked and approved by those whose love is worthless to you" as a means to overcome the limitations of the original model that explains motivation, which only examined

close relationships. However, the key aspect of the analysis of motivation done by Smith has to do with the possibility of breaking apart the concept of being worthy of approval from the concept of being approved; both ideas belong to the notion of moral consciousness.

Thanks to our capacity of being conscious of having behaved honourably, even if we are censured by such behaviour, we shall not feel guilt. Correspondingly, if someone hates us and is annoyed by us, and we are, however, praised, that is a cause for moral perversion.

Moral consciousness, therefore, is linked to the principle stating that "Fear to be worthy of censorship is greater than the fear to be censored."⁵ The key aspect resides then, in the power to distinguish between being praised correctly and being praised wrongly or improperly. Being worthy of affection does not derive from being approved. If being worthy of affection is a more objective attitude, this can only be derived from the impartial observer. Being worthy of affection can only be established objectively from an impartial viewpoint. In fact, "the impartial observer becomes the regulatory idea of approval itself, and this regulatory idea belongs to approval (...) from the start, because such objective desire is something inherent in the sense of approval."⁶ As a consequence, it is impossible to approve someone without judging him or her as good. Tugendhat

3. SMITH, A. *La teoría de los sentimientos morales*. Madrid, Alianza, 1997.

4. TUGENDHAT, E. *Lecciones de ética*. Barcelona, Gedisa, 1997, p. 301

5. *Ibíd.*

6. *Ibíd.*, p. 302.



The virtues that are useful in the relationships established with others assume that one is interested in the well-being of others and such idea is supported by the emotion of kindness or empathy.



considers Smith's theory of motivation is solid since it allows to break up approval from what is worthy of approval, that is, being able to see clearly that approval is legitimate due to reasons and as a consequence, thanks to a principle of moral indictment. But, which is that principle and how is it determined?

The categorical imperative as the only moral plausible principle

The objectivity of moral seems to rule the possibility to establish when a moral judgement is wrong or right. From the objective point of view of the impartial observer, there are several levels in which a judgement in moral trials can be given:

1. The error arises in whoever judges by lack of information. In this case the error is empirical and not regulatory.
2. The mistake resides in the fact that the situation is empirically complex and there are

several normative aspects which must be dealt with from the point of view of the impartial observer.

3. The error is related with the difficulty to establish who take part of the moral community. It is uncertain whether the impartial observer can be any human being or the member of an established moral community. For Smith, the impartial observer is any human being, though; this fact does not exclude him, according to Tugendhat, to practise ethnocentrism. The only way to avoid it would be by establishing a notion of good through some valid cross-cultural regulations.
4. We may question the rightness of a regulation from the point of view of its legitimacy or its justification. But, if there isn't an absolute justification for moral principles, then, what choice is there left?

At this point Tugendhat's way out is witty: if we cannot justify rationally the principle of moral,



we certainly can compare several principles to choose the most rational or plausible. However such comparison would not be necessary if the principle of the impartial observer were accepted as valid to build up some universal ethics. But, according to Tugendhat, the principle has serious idiosyncratic limitations because the impartial observer sees things from a certain point of view, without which he would not be able to judge.

In fact, the principle assumes the point of view of empathy, about which we can ask yet why that is the foundation and not another. Besides, the principle provides little justification for the virtues of justice and charity. For that reason, it is necessary to merge Smith's principle and the kantian categorical imperative: if a judgement is to be made, it must be done from the point of view of "unbiased respect to the interests of participants."⁷

For Tugendhat, such statement of the principle of justification of moral judgement implies distinguishing two issues: "What seems to be morally right from anyone's viewpoint, that is to say, from the one who judges impartially?" and "How does anyone wish to be treated by everyone or how does he want people to behave with him?"⁸

The convenience of the moral principle lies on the kantian strategy of building up the first issue over the second. But what does this mean? It means that whatever is good can only be defined in a universal way from the unbiased consideration of the participants' interests. Everyone

wants to be judged impartially. The problem with the traditional religious moral is that it presents "universality" from a certain point of view that cannot, after all, be considered universal.

We shall now look into the arguments that Tugendhat provides to support his thesis about "the principle of equal consideration of the rights and interests of everyone" as the only plausible moral principle. Tugendhat divides his line of argument in two steps, which he calls the positive and negative components. The positive step consists in showing that the principle is advisable, whereas the negative step consists in showing that the other candidates that are presented as the plausible principle are not advisable (rational) due to certain conceptual errors.

The positive step is based on the argument of the moral parasite or Free Rider and intends to show the rationality of the procedure to establish which moral regulations one would wish others to adopt. The moral parasite is a member of the moral community where it lives, and it must assume that there is a moral consciousness in others and it can even promote it. The Free Rider enjoys the benefits of living in a moral community, but without having obligations with others. If what one wants is that his wishes are respected, rationally speaking, the best choice would be deciding to live in a community that promotes respect for the interests of all. As a consequence, the best moral, the most advisable, from the users' point of view would be kantian moral. Tugendhat wonders if his argument is circular since the strategy of

7. *Ibíd.*, p.305.

8. *Ibíd.*



asking who can benefit from moral seems to assume exactly what has to be demonstrated. But there is not such circle in his line of argument because being moral supposes overcoming the ethical selfishness, which does not mean that the interests of individuals must not be taken into consideration. A moral that does not concern about the interests of others does not seem to be coherently conceivable.

The negative step consists in showing the little convenience of other approaches in the matter of moral justification. According to Tugendhat, they are three:

1. The ethics of compassion, whose principle is not to cause pain and to avoid it. Tugendhat discards it as plausible because it is not possible to build a system of regulations based on that "principle".
2. The communitarian ethics, whose principle is defined for the ideal of preserving the State. Tugendhat does not consider it plausible because the value of loyalty to the State over personal benefits ends up by using transcendental justifications.
3. The utilitarian ethics, which is a moral of compassion in a positive sense.

The only valuable competitor, in the struggle for plausibility is utilitarianism. According to Tugendhat, utilitarianism is a sort of ethics that he shares with Kant's ethics, the emphasis over the concept of person and the fact that it does not turn to transcendental entities in the foundation of the moral. But Tugendhat considers it is possible, in his discussion with utilitarians, to leave aside the

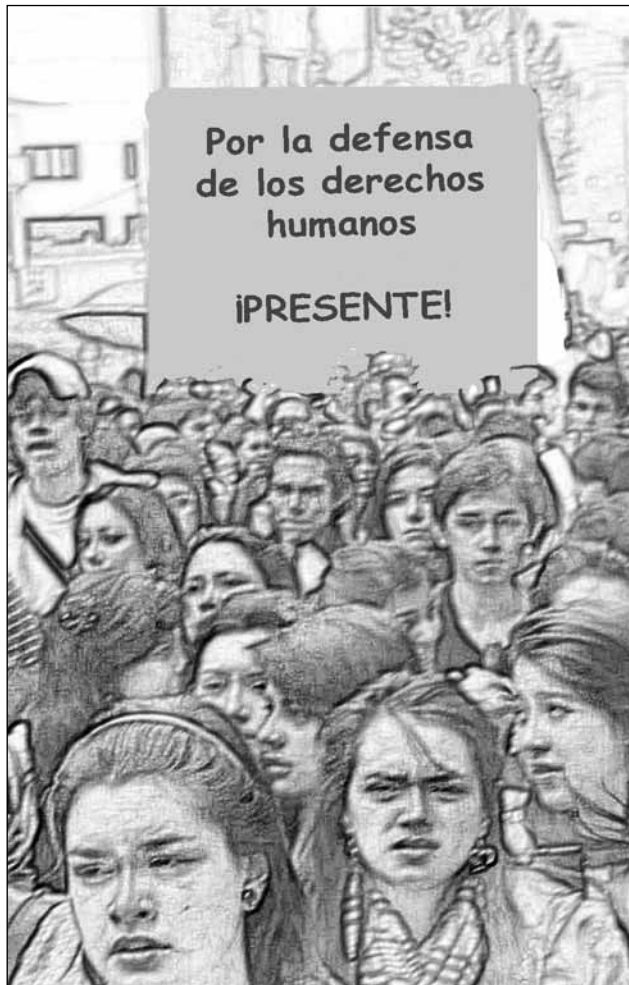
topic of animals, a very problematic issue, because it is impossible to talk about classic utilitarianism, without understanding that it is precisely the widening of the moral circle. It seems necessary as well to start to take animal rights seriously since that is one of the most innovative elements of the ethical proposal of utilitarians.⁹

Tugendhat acknowledges that the principle of moral justification of utilitarianism "contains something in favour which has been neglected by kantism"¹⁰, something that can only be exposed if the strategy of resigning to the transcendental foundation of the moral is adopted, without embracing an insufficient contractualism. In order to grasp clearly the valuable component that lies behind utilitarianism, Tugendhat does a small historical reconstruction of the development and evolution of utilitarianism. The utilitarian principle is first stated by Hutcheson. Hume introduces a similar notion; the Scottish philosopher defends the thesis by saying that what gives moral value to virtues is their usefulness in the relationships with others and with one self. The virtues that are useful in the relationships established with others assume that one is interested in the well-being of others and such idea is supported by the emotion of kindness or empathy. Acknowledging that what gives value to certain virtues is their usefulness to others is an idea supported in the proof provided by Hume to reject monastic virtues. His argument is as follows:

And since it is admitted that every quality, useful or pleasant for us or for others is part of a personal merit, no to her quality shall be admitted when men judge using their natural reasoning,

9. SINGER, P. *Ética práctica*. Cambridge University Press, Londres, 1993.

10. *Ibid.*, p. 310.



The principle of universal respect does not mean that in all circumstances people should be treated in the same way.

There are cases where respect demands treating others in a different way, but such differentiation can be built up from impartiality.

without prejudices and the natural and the deceptive appearances of superstition and fake religion. Celibacy, fasting, punishment, mortification, denial of oneself, humility, silence, solitude and the whole set of monastic virtues...why are they rejected everywhere by sensible men? Is it because they are worthless, because they do not contribute to the fortune of men in the world, they do not make man more valuable as a member of society or more qualified for the enjoyment and amusement of the group nor increase his capacity to enjoy? On the contrary, all of these virtues hinder these desirable ends; they make one's mind stupid and one's heart harder, they darken fantasy and make a person bitter. As a consequence, we shall change their classification and list them under the category of vices; there is no superstition among men, strong enough to corrupt entirely the strength of these natural feelings. A gloomy and stubborn fanatic can leave behind, after his death, a place in time but would hardly be admitted during his lifetime in private and in society, except by those as delirious and gloomy as himself.¹¹

According to Tugendhat, the thesis about the usefulness of virtues stated by Hume agrees with own thesis about a moral that has to do, first and foremost, with the wishes and interests of others. What is more, kantism and utilitarianism both coincide in rejection of a theological moral; the only idea accepted as the basis for the construction of a morality, is the idea of respect for the interests of others, a concept that utilitarians associate with the notion of benevolence. However, the comparison with Hume's theory presupposes limitations because its conception of usefulness or happiness belongs to society and not to the individual. This fact also presupposes limits for his idea of justice

11. HUME, D. *Investigación sobre los principios de la moral*. Buenos Aires, Aguilar, 1968, pp. 146-147.



which does not include a notion of consideration “for every one and for all.”

The best action is that one that provides the most happiness to the largest number of people” such is the principle in which Hutcheson summarized the utilitarian principle. But the key aspect in Hutcheson is his contribution in showing the limitations of kantian deontology, when suggesting a question that, as Tugendhat admits, kantism has not taken seriously “How do we behave morally better before several alternatives of action that concern positively or negatively several people?”¹²

Responding this question right implies formulating the general plausible principle of moral: “... the interests of all must be respected equally; everybody has the right to that.”¹³ But, how does the principle of usefulness relate to new this principle? At first glance, the principle of greater happiness is not equivalent to the principle of impartial respect to the interests of all due to two reasons. First of all, the principle of respect includes the notion of justice when mentioning equal rights, whereas the principle of usefulness does not include it because the utilitarian operation is concerned with establishing the greater amount of happiness or unhappiness. The issue of distributive justice is indifferent then: there are rights that cannot be guaranteed or distributed according to merit; they are valuable for all unrestrictedly. Secondly, the principle of universal respect does not mean that in all circumstances people should be treated in the same way. There are cases where respect demands treating others in a different way, but such differentiation can be build up from impartiality. But What happens

with the principle of greater happiness? Does it produce the same results than the principle of universal respect? It is at this point where Tugendhat develops criticism to the principle of usefulness and to utilitarianism through the study of three cases. The strategy consists in showing that the principle of greater happiness would lead to morally reprehensible acts, so, the principle of universal respect as the only plausible moral principle should be adopted. Let us remember that Tugendhat has to show that utilitarianism is not rationally acceptable and therefore, it cannot be plausible.

- First case: The rule of greater happiness demands suppressing special rights such as those derived from a promise or a contract. A utilitarian must accept, if he is conscious of his role, that it is necessary to break up promises if that leads to getting a greater happiness.
- Second case: The rule of greater happiness implies not to recognize special obligations that come up from personal relations (father=son). We are bound to feed our son, but not any person's son. A coherent utilitarian must admit that if a great happiness is achieved, even if we sacrifice those special obligations, it is necessary to do it.
- Third case: The rule of greater happiness allows the right to sacrifice a life and to have at one's disposal the organs of a patient if six lives are saved with that action, because obviously the result is best if happiness is maximized for the most people.

12. TUGENDHAT, E. *Lecciones de ética*. Barcelona, Gedisa, 1997, p. 311.

13. *Ibid.*, p. 312.



A possible way out to such criticism consists in stating that the utilitarian point of view is sustainable if “additional empirical connections” are considered. For example, the second case can be responded by saying that “those whose special rights are harmed will suffer the most, and also when the rights of their relatives are violated.”¹⁴ But for Tugendhat the key aspect here consists in discovering that the weakness in the principle of usefulness resides in its empirical correction when shown as an insufficient principle. The principle of universal respect, differently, allows a reasonable solution to the three problematic cases, being therefore, more plausible, comparatively speaking.

For Tugendhat the reductionist character of utilitarianism seems shocking, especially Bentham’s which sees relationships with others in terms of additions and subtractions. Though he recognizes that the principle “Everybody must be regarded as one and nobody as more than one” is a step forward in the moral of humanity, its scope of action is restricted to the rules of the game of the utilitarian calculus, and it cannot be interpreted as a principle related to the equality of rights. But, are the critics to utilitarianism valid? Is the principle of universal respect a kantian principle or is it just another utilitarian principle?

Firstly, the notion of utilitarianism set out by Tugendhat whereas exhaustive, it is also exclusive for Mill, one of the most important critics of Bentham. Mill was someone who carried on with Ben-

tham’s utilitarian philosophy. He was convinced about the importance of finding a moral foundation which would not make us of metaphysical principles but to observable facts. Mill improved Bentham’s usefulness principle. For both, the idea of usefulness was related to the obligation to promote actions that could guarantee happiness for the most of the people, as foundation of the moral. The concept of happiness here, originally meant pleasure and lack of pain. However, Mill expanded the notion of usefulness now settled in the permanent interests of the man who looks for a moral improvement.

As a means to reach this ideal more accurately, usefulness will recommend, firstly, that the laws and social organizations bring into line as much as possible, happiness or (as stated in practical terms) the interests of each individual with the interests of the group.¹⁵

In Mill’s utilitarianism, there is also a clear notion of impartiality which brings him closer to Kant:

I must repeat that opponents to utilitarianism rarely judge it fairly and acknowledge that the happiness that constitutes the utilitarian principle of what is right in a type of behaviour, is not happiness for the agent himself, but that of all the people involved. Between the personal happiness of an agent and that of everybody else, the utilitarian forces him to be totally impartial, like an unconcerned and benevolent spectator.¹⁶

Mill considered that the previous utilitarianism became a sort of static and problematic individualism which focused on the satisfaction of

14. *Ibíd.*, p. 313.

15. MILL, J. S. *Utilitarismo*. Barcelona, Altaya, 1994, p. 62. The emphasis is mine.

16. *Ibíd.*



pleasure of the individual. For Mill, individuals are dynamic entities in a process of perfection and as such, are oriented to the development of all its potentialities. Mill also condemned the individualism that only responds to private interests and is unconcerned about public interests or those shared by people. Mill, contrasting with Bentham, considered that moral emotions were fundamental when dealing with ethics. Moral feelings precede the particular interest. This approach helped him understand that what brings together individuals is not pleasure but the improvement of the human spirit, that is to say, that one thing was personal satisfaction or personal interest, and quite a different thing was happiness.

One of the fundamental contributions to Mill's thought occurred in the field of relations between religion and moral and the rejection of a transcendental foundation of moral. Mill wondered if religious belief is really necessary for the wellbeing of mankind or if, on the contrary, the benefits provided by religious belief could be obtained in a different way without standing the disadvantages that are linked to those benefits when obtained from religion. Mill proposed then, the creation of a new religion: the religion of humanity. It was a kind of religion that did not want individuals to become interested in celestial reward, but focused instead on making people responsible beings who did their duties thanks to love to mankind.

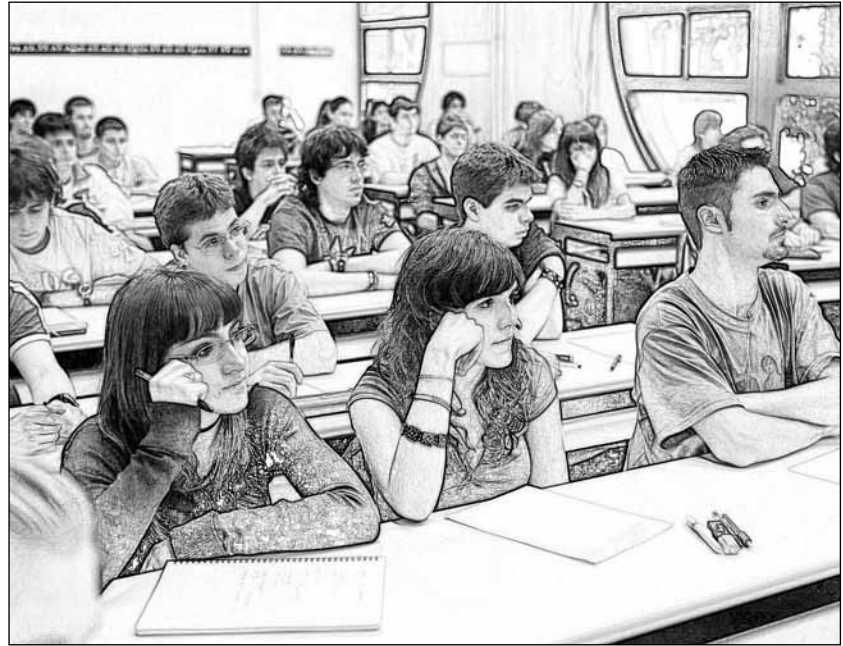
Regarding Tugendhat's arguments about the three cases to refuse utilitarianism, they do not seem very convincing; they only seem to have impact on the utilitarianism of the act, but not the

utilitarianism of the rule. Utilitarianism of the act judges the good or evil of the actions depending on the benefits that come up from them. But, this is done without appealing to the rules. Utilitarianism of the rule, on the contrary, states that promises must, in general, be subject to obedience because it is respect to the norms what generates a comparatively larger usefulness than its systematic failure. Regarding people's sacrifice in Mill's perspective it is clear that is not possible, thanks to utilitarian reasons, accept certain benefits sacrificing other individuals. The idea of impartiality and of considering other individual's interests cause that such act cannot be performed without violating certain ideals. And such ideals are part of the wellbeing of the community. Without it one cannot enjoy the benefits of freedom. Who would like to live in a society where there isn't a minimal standard of security for living and where one cannot get something and enjoy it without sacrificing somebody?

In the next part, I will intend to prove that the so-called kantian principle of Tugendhat is in fact, a utilitarian principle with which the plausible moral would be this one and not Kant's. According to Tugendhat, the principle he supports is "...the principle of equal consideration of rights and interests of all." But this principle admits a utilitarian interpretation, because it is only enough to ask each other what are the consequences that would come about when adopting such principle. This principle is similar to the one suggested by Peter Singer in his book *Practical ethics*, published in 1980. For Singer, his utilitarian ethics is based in the principle of equal consideration of interests. The best consequences are defined in terms of such principle.



The individuals are dynamic entities in a process of perfection and as such, are oriented to the development of all its potentialities.



The principle states that at the time for action, one must take into consideration the interests of all the people affected by my action. An action is good if it maximizes the interests of the people affected. The principle of equal consideration of interests is a principle of equality and impartiality. In Singer's words:

The essence of the principle of equal consideration of interests is that in the moral deliberations we give the same importance to similar interests of all of those who are affected by our actions. This only means that only if A and B were affected by a certain action in which A seems to lose more than what B wins, it is advisable not to perform such action. If we accept the principle of equal consideration of interests, we cannot state that performing a certain action is better in spite of the facts described, because we are more concerned about B than about A. What really

comes up from the principle is: an interest is an interest, no matter whom it belongs to.¹⁷

This principle is utilitarian. In fact, based on it we are able to respond to Tugendhat's criticism and see a classic utilitarianism that continues Singer's favorite utilitarianism.

The way of thinking I have sketched is a form of utilitarianism. It differs from classic utilitarianism in the fact that it can be understood by the best consequences, which in general, favours the interests of the people affected and not only acts as the thing that increases pleasure and reduces pain. (However, it has been suggested that classic utilitarians as Bentham and John Stuart Mill used "pleasure" and "pain" in a wide sense that allowed including as "pleasure" getting what one wanted and the opposite as "pain". If this interpretation is right the division between the

17. SINGER, P. *Ética práctica*. Cambridge University Press, Londres, 1993, pp. 25-26



classic utilitarianism and the utilitarianism based on interests disappears.¹⁸

It is clear, from what has been said, that the principle of equal consideration of interests, is at the same time, a principle of judgement and a decision procedure, which allows overcoming the limitations of the kantian principle which can only be a principle of judgement.

Human Rights and the principle of universal respect

According to Tugendhat the principle of universal respect implies the acknowledgment of the equality of rights for all. If our commitment is to respect the interests of others, that implies acknowledging that the others have rights. But such thesis needs to be supported, and therefore we must respond to two questions: 1. What justification is there to acknowledge that those people whom we have duties to accomplish have rights related to those duties? 2. What does it mean to have a right? Responding both questions implies establishing whether we are or not justified to talk about moral rights based on the notion of moral obligation, which will lead us from the private to the public field, that is to say, the issue of political moral where the good or evil of certain actions of the State is to be established.

Tugendhat's justification begins by stating, as a starting point, what is the justification of subjective rights. Is it possible, as Mackie suggests deriving the moral from the concept of subjective

right without appealing to the kantian or utilitarian principle? According to Tugendhat, a moral based on the notion of subjective right opposes, more than everything, to utilitarianism, which as a teleological moral, does not accept the superiority of the rights of all as something inalienable divorced from the notion of usefulness. In kant's case, the opposition to Mackie's proposal is less clear, because in kant's view there is obviously an ethical direction which favours a justification of human rights from the notion of obligation embedded in the second formulation of the categorical imperative, which allows to deal with the topic of respect to the rights of others. However, Mackie's proposal fails to succeed since the concept of obligation cannot be replaced by the concept of right because the concept of obligation implies the notion of penalty, and therefore, the rights would lose ground without a notion of obligation. It is not possible to talk about rights without penalties.

It is necessary then to sort out the notion of subjective right. For so doing, it is useful to begin by rights that are not legal nor moral or that do not require to be legal or moral as a strategy to understand such concept. When a promise is stated the corresponding right linked to an obligation, comes up.

I am bound to keep a promise and people have the right to demand that the promise is upheld. However, rights are things that are demanded but also that can be declined. Besides, it is possible to learn what it means to have a right prior to the capacity to evaluate, morally speaking. As a

18. *Ibíd.*, p. 17. The emphasis is mine.



consequence, when someone says that breaking a promise is bad we just mean to say that “there is a non relative moral obligation of keeping the relative obligation we have before someone we have made a promise to.”¹⁹ Therefore, if that is so, there isn’t an explanation of what a moral right means. What we have is overlapping of the moral and legal levels. Breaking up a promise can send me to prison. Moral rules can give place to penal rules and the law can be morally subject to trial.

But, Is it reasonable to build up the special rights through the general corresponding rights, moral and legal and also to relate to the rights parts of other moral and legal norms?”²⁰. What is at stake here is trying to justify the widening of the demands or the complaints towards somebody, as part of the special rights, to a more general level of complaint, that is to say, in the case of legal law, towards a judicial level. But in the case of the moral law, it is not obvious that it would do as a level of more general complaint. In such difficulty, the question that arises for Tugendhat is “What is the purpose of talking about the right over something, in general terms?”²¹ To have the right over one thing, means, from Alexy’s interpretation, similarly, as in the case of special rights, that someone must respond, and it is the State in this case. But demanding the fulfilment of a right can also be directed to all the people.

But the key aspect that must be solved is ...”what does it mean then that human beings “have”

certain rights simply because they are human beings?”²². At first glance it does not seem clear enough that there can be rights that have not been granted by anyone, just as happens with human rights, which simply one has because of the fact of being human beings. But, is this fair? According to Tugendhat, is not. Human rights are granted by us to all human beings as long as we accept and take the moral of universal respect. In this sense, moral rights are rights awarded by ourselves if we accept to treat others according to the principle “... the interests of all must be respected equally; they have the right to that.” Afterwards, Tugendhat wonders if such rights really exist, otherwise his argument in favour of the foundation of human rights based on the principle of universal respect does not seem to work. What has been proved is that those rights exist; a reasonable way to explain their origin is that they have been granted appealing to the moral of universal respect. But the matter now is to know whether they exist or not. How do we establish the existence of such rights?

The answer can only be given from the principle of moral trial, that is, “...from the place where... it is necessary to respond to all moral issues: How would we like, from an impartial point of view, others to behave?”²³ But how is the existence of human rights established from such principle?. Tugendhat’s explanation is as follows:

if we accept the other as subject of rights, and we think of him-her as someone holding in his

19. TUGENDHAT, E. *Lecciones de ética*. Barcelona, Gedisa, 1997, p. 329.

20. *Ibíd.*, p. 330.

21. *Ibíd.*

22. *Ibíd.*, p. 332

23. *Ibíd.*, p. 334.



hand an indefinite amount of invisible reins we are linked to as member of a moral community and which he can remind us about, if necessary. This may not be too much but it is something; the other is considered now as a subject (subject of rights) and not just as the subject of our obligations, that is to say, the reinforcement of the moral from the impartial view of the person affected is desirable, the answer can only be affirmative, and therefore there are rights (their existence then, can be derived so rapidly), and it is justified that I have understood like that, from the beginning, the moral of the categorical imperative. The contents of the categorical imperative is stressed now, that is, everything is judged from the point of view of those who have the rights. Though the concept of rights is based on the one of obligation, its contents is such that obligations arise from interests and needs and from the rights that derive from them: the rights follow out of needs, if that is desirable from impartial judgement²⁴

The previous line of argument in Tugendhat implies certain problematic thesis. The first thesis establishes that the most plausible foundation to derive human rights is the principle of universal respect. This is so because it is supposed to be the most plausible moral principle. The second thesis establishes that there is a strong relation between interests, needs and rights to the point of admitting that rights exist if they are related to interests and they are acknowledged from an impartial point of view. This last thesis may seem contradictory: Tugendhat states that

young children have rights but no obligations and then, it seems necessary to ask oneself if it is relevant to attribute interests and needs to a child.²⁵ At first glance it may seem pointless and as a consequence, children would not be entitled to have rights. Tugendhat may respond to that saying that within our interests lies the obligation to acknowledge them certain rights, but that fact does not imply that they have their rights on their own. If the granting of rights depends on being able to have interests, then, Tugendhat would be, again, a utilitarian since for Singer, for example, having the right to live is related with the interest of wishing to be alive and therefore, with the capacity to have interests, a quality that can only be attributed to the human beings who are people, that is to say, self-conscious, rational beings, capacities which children do not have.²⁶

Human Rights without foundation: Rorty's proposal

But to continue our discussion, we shall suppose that what has been said here, so far, against Tugendhat is invalid and that his moral proposal is the most plausible and useful to base human rights on. But, if it is possible to demonstrate that human rights do not require foundation then, what sense is there in talking about a plausible moral? In the next section I shall present and analyse Rorty's

24. *Ibíd.*, p. 336 It is worth to point out the similarities between Tugendhat and Alan Gewirth regarding the foundation of human rights. According to Gewirth, human rights "...require all agents to take into consideration favourably, the most important interests of other future agents." Gewirth, A. "The basis and contents of human rights" in: Betegón, J., (ed.) *Derecho y moral*. Barcelona, Ariel, 1990, p. 134.

25. TUGENDHAT, E. *Lecciones de ética*. Barcelona, Gedisa, 1997, p.171 and others.

26. SINGER, P. *Ética práctica*. Cambridge University Press, Londres, 1993, p. 187.



arguments favouring the thesis stating that human rights cannot be nor need to be based on a rational principle,²⁷ as Tugendhat clearly argues.

If those who violate human rights, do not believe they are violating them then, the explanation to this paradox is due to the fact that those who kill and rape others do not include them in the circle of moral consideration of respect to humans. Neither Israelites killing muslims, nor muslims killing Israelites are from any point of view, violating anybody's right to live. Both state they are killing animals, not human beings. The answer of the moral traditional founding to this nonsense, according to Rorty, has been looking for a criteria to establish "...what is special about the biped featherless, explaining what is essential to the human beings."²⁸

Having rationality has allowed, historically speaking, to distinguish animals from men, and has become, at the same time, the basis of moral. Such approach, according to Rorty, must post a cross-cultural reality which allows such rationality to be announced on a universal basis for human beings. But, is it correct to speak about a universal rationality? Is it the principle of cross-cultural universal respect the basis of human rights, as Tugendhat suggests? For Rorty, there is no possibility to find the basis, beyond the cultural aspect, for such rights. On the contrary, for Rorty, it is mandatory to

... defend the thesis stating that nothing relevant for the moral decision distinguishes human beings from animals except from certain facts of the world, historically contingent, that is, cultural facts.²⁹

According to Rorty, it is possible to speak about ethics without universal basis and that does not imply to omit the chance to promote respect for human rights. If it is not possible to speak about a universal human nature then, respect to human life does not imply finding the essence of what is human. Instead, respect to human life is supported on historical and cultural facts and not on something that can be beyond those contingent facts. Whoever states that respect to human rights depends on his knowledge of human nature, is committed with the knowledge of facts that are independent from culture and history. However, for Rorty it is impossible to escape from our historical and cultural conditioning and to be in rational contact with that essential characteristic that distinguishes whatever is human. The assumption that there is a knowledge of human nature is based on, the assumption that there is an essence for the human and a searching capacity for that essence.

But those assumptions cannot be supported if a naturalist viewpoint is adopted. This idea, inspired by Darwin who

... has caused most intellectuals to move from the idea that human beings have got a special ingredi-

27. Rorty, and Michael Ignatieff, is one of the most famous representatives of the anti-foundationalist approach of human rights. See Ignatieff, M. "Human Rights as Idolatry" in: Gutman, A. *Human Rights as Politics an Idolatry*. Princeton, Princeton University Press, 2001.

28. RORTY, R. *Verdad y progreso*. Barcelona, Paidós, 2000, p. 222.

29. Ibid., p. 224.



Whoever states that respect to human rights depends on his knowledge of human nature, is committed with the knowledge of facts that are independent from culture and history

ent attached. He has convinced almost all of us that we are animals with an exceptional talent, smart enough to take responsibility of our own evolution.³⁰

Darwin's great legacy is having shown that an essence of the human cannot exist and that the human condition is to be submitted to change: humans are more modifiable and subject to create themselves again and again more than platonic essentialism had originally conceived. For that reason, the growing historical consciousness of such contingent human condition cause philosophical research programmes to be purposeless in their search to find our true nature as a condition to speak about a solid basis for the moral. In fact, Darwin does not propose another theory for the true human nature but "...gives as reasons not to ask ourselves what we really are."³¹ Therefore, if

human rights must be based on morally meaningful cross-cultural facts, then, such facts must exist independently from any culture.

But, if good reasons are found to believe that those facts do not exist, that would imply neglecting the possibility to be in touch with the real human nature. The essence of human nature would become a platonic myth whose reality is not demonstrated due to the urgent need to escape once and again, from the contingency of everything that is human. For Rorty it is possible to develop a pragmatist argument that shows the moral futility of Platonism as follows:

This pragmatist argument against the platonic believers has the same nature as one that shall be used to suppress the wages to the priests that offer religious services purposely in favour of military victories. It would also state that the real effort

30. *Ibíd.*, p. 228.

31. *Ibíd.*, p. 230.



of winning a war is in charge of the generals and admirals, not to mention privates. This argument does not say: since allegedly there are no Gods, there's probably no need to support priests. But: since allegedly there is no need to support priests, then, probably there are no Gods. Pragmatists reason out from the fact that the raise of culture of human rights does not seem to owe anything to the increase of a moral knowledge but to all those sad and sentimental stories that we have been told, to the point of denying a type of knowledge like the one Plato imagined. And we must add that since it does not seem that persisting in the allegedly non-historical human nature is useful, probably such nature does not exist or at least, there is nothing in it relevant to our moral decisions.³²

The pragmatic argument of causal efficiency proposed by Rorty, is based on Jame's teachings which subject philosophical ideas to a careful choice of practical results. It is mandatory to analyse whether the problems and philosophical arguments exert influence on human matters.

For both pragmatists, affirming that a certain belief is true is the same as holding that such belief determines a relevant difference in the practice. In this sense, to turn to a moral cross-cultural knowledge is not worth enough to explain how respect to human rights takes place because that resource lacks causal efficiency. Without that

efficiency, there is no way to assure the real existence of certain moral cross-cultural facts whose knowledge can provide with solid background for the grounding and respect of human rights. For Rorty it does not have to do with the pragmatism question "What are we?", but instead, the question "What do we want to become?", the one that must be responded. It is necessary to examine the practical consequences of adopting certain moral beliefs, rather than finding the essence of goodness.

The pragmatists do not believe that making inquiries can make us face a non human reality more than ever and consequently, according to them, the only important matter is: Would human life in the future be better if we adopt such belief, such practice, that institution?³³

The promotion of human rights does not depend on the arguments that resort to a cross-cultural rationality. Nonetheless, Can appealing to moral emotions have the necessary causal efficiency as to explain the advent of a culture of respect to human rights? For Rorty, this is the case, and it means that making the utopian idea of Illustration real, that is to say, the liberal utopia of respect to certain inalienable rights can only be real "... by manipulating our emotions and not increasing our knowledge..."³⁴

32. *Ibíd.*, p. 226.

33. RORTY, R. *El pragmatismo, una versión*. Barcelona, Ariel, 2002, p. 34. In fact, for Rorty traditional ethics that resort to platonic or quasi-platonic realities to set the moral basis of respect to human rights can be accused of being authoritarian ethics. This includes Plato, Kant and Tugendhat. For that reason, for Rorty his pragmatic and anti-foundationalist approach of human rights must defend the possibility of an anti-authoritarian point of view: "By authoritarianism in ethics I mean the development I have just described: the attitude that understands what we regard as abomination of the moral not as a type of intuition produced by a part of us which is in connection with something non-human and good but with a cultural legacy that must be revised.." *Ibíd.*, p. 38.

34. RORTY, R. *Verdad y progreso*. Barcelona, Paidós, 2000, p. 226.



Before thinkers like Tugendhat, Rorty intends to show the plausibility of an ethics of respect to human rights without the need to advance universal rational grounds. It is mandatory to resort to moral emotions and to overcome the traditional dualism between reasoning and emotion which the German philosopher still faces. It is mandatory to abandon the Platonic tradition responsible of such dualism and to be inspired instead, by philosophers like Hume, who questioned the alleged opposition between reasoning and emotion. Hume has shown by far that an adequate comprehension of moral cannot be excluded from the determinant role of moral emotions.³⁵

Departing from this idea of Hume's, Rorty presents some criticism against the rationalist and foundation-like tradition in moral philosophy. That tradition has presupposed that the only way to understand and explain moral progress is by interpreting it solely as a type of progress related to moral knowledge. Moreover, from this rationalist view, emotions cannot reveal the concept of moral obligation; a concept necessary for discussing about human rights, as Tugendhat clearly declares.

Nonetheless, according to Rorty, the notion of moral obligation does not depend on a philosophical theory to be explained, as Tugendhat affirms, for there is nothing to explain, in fact. It is not true that people show they are more respectful to human rights because they know more about the nature of goodness itself or about the universal nature of practical rationality. Whatever can and

must be understood out of moral obligation is not derived from a different source to the one provided by achievements of the liberal tradition in its several acculturation processes and in the generation of new habits of respect to human rights.

The foundation-like mistake of the traditional moral philosophy, which Tugendhat makes as well, is to build a mythical image of a non relational, selfish self that only follows his wishes, without considering the interests of others. That strategy, based on the creation of that mythical self, allows to assure that emotions are not solid enough to face the challenges of morality and that only reason can save human beings and make them better people. In Rorty's words:

... a self who can exist without worrying about the others, a self seen as a cold psychopath that must be punished in order to consider other people's needs. This is the image of the self that philosophers as Plato interpreted in terms of the division reasoning-emotions... since Plato existed, the western world has considered that the distinction reasoning-emotion is comparable to the distinction between the universal and the individual and to the distinction between altruist acts and selfish acts. From this viewpoint, the religious, Platonic and Kantian traditions have influenced our thinking with the distinction between a real and a fake self, between a self attentive to what his consciousness tells him to do and one that is concerned with his real interest. The latter cannot even become moral, it is just prudent.³⁶

These types of rational explanations of moral are precisely the ones to abandon as a condition to start to acknowledge the value of moral emo-

35. HUME, D. *Investigación sobre los principios de la moral*. Buenos Aires, Aguilar, 1968.

36. RORTY, R. *El pragmatismo, una versión*. Barcelona, Ariel, 2002, pp. 206-207.



tions. Rorty believes that there is a real alternative to the explanations and rationalist foundations of the moral. If we do not accept that human beings have the capacity to feel kindness to others, the problem presented by anti-moralism about why we should be moral would be insoluble if all human beings were moral parasites. In this way, moral progress would not have anything to do with an alleged increase of practical rationality of the moral agents. On the contrary, progress means, according to Rorty, understanding that a culture is better than the other because it respects human rights. In fact, that respect is only understood if one considers that those human beings have developed a greater level of sensibility towards the others, that is to say, they are more supportive: they feel other people's pain as their own. That sensibility to other people's pain is what makes possible to fight for the recognition of the human rights of those who are not traditionally considered equal in rights: homosexuals, ethnic minorities, etc. Without an education for the emotions, without moral emotions cultivated, the dream of an inclusive society is nothing more than wishful thinking.

The best argument, and probably the only one to leave foundationalism behind is the one I have suggested already: it would be more efficient to do it because it would allow us to concentrate our energies on the manipulation of emotions, on sentimental education. This type of education makes people of diverse classes become familiar to

the point of being less tempted to regard those who are different from them as if they were quasi-human. The goal for this sort of manipulation of emotions is expanding the reference of our expressions to persons of our class and people like us.³⁷

Conclusion

Is Rorty's stand coherent when talking about an ethics without foundations and defending, nonetheless, human rights? After all, do not human rights require a universal foundation? As a conclusion, I would like to assess and to look into some arguments against Rorty's anti-foundationalism.

For some theoreticians as Schaefer, Rorty's stand is inconsistent, reason for which, it is not possible to be anti-foundationalist in ethics and to be in favour of human rights. It is necessary to be foundationalist if defending those rights is required, because

... his explanation (Rorty's) about why the project of human beings is relevant, also implies stating a crucial supposition that can only be justified making use of any foundation.³⁸

If human rights do not depend on a foundation that is supported on moral universal obligations, but it is just enough to use mortal emotions, as Rorty proposes, then, How can moral progress be explained based on the development and increase of a feeling of kindness, more and more gener-

37. RORTY, R. *Verdad y progreso*. Barcelona, Paidós, 2000, p. 230. For Tugendhat the justification of the moral cannot depend on motivations, that is to say, on feelings, but on a substantial set of reasons. Besides, feelings only have a role in ethics if respect is implied beforehand, that is to say, that the principle of morality is prior to emotions and not otherwise, as Rorty suggests. Even if it were admitted that feelings were determinant on ethics, they would only be admitted contingently, something that would be very problematic from Tugendhat's stand. Further on, we shall study a possible answer from Rorty to this objection.

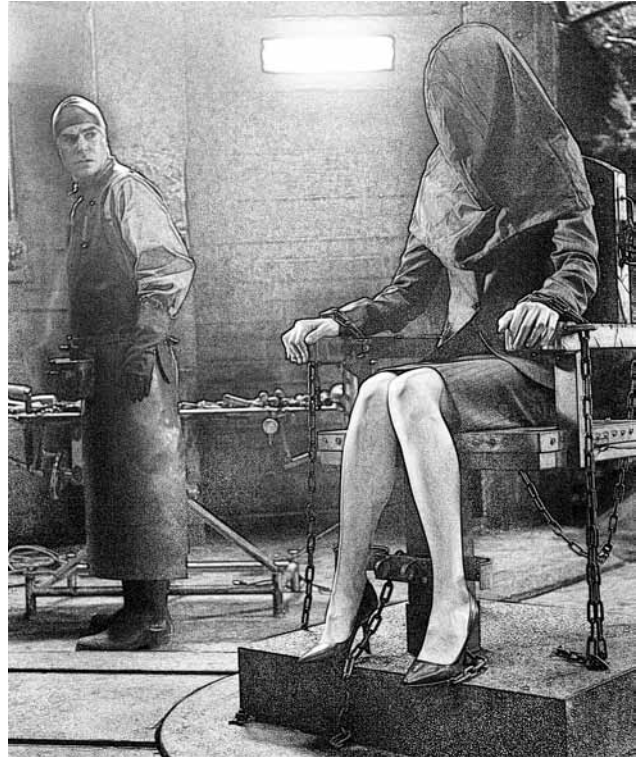
38. SCHAEFER, B. "Human Rights: problems with the Foundationless Approach", *Social Theory and Practice*, Vol. 31, #1, enero. 2005, p. 36.



alized without implying any type of foundation that can explain the enlargement of such feeling? Moral progress implies showing moral emotions that are recognized as valuable cross-culturally speaking. Rorty is an essentialist, after all, a fact which makes his stand flawed in favour of human rights. This is because he presupposes for his sentimental defence of those rights that which he precisely denies.

Rorty seems to believe that he can omit the topic of foundations making use of emotions rather than facts. But this does not seem plausible. If it is true that certain feelings are (cross-culturally speaking) more valuable than others, this is surely true for some facts (cross-cultural) or sets of facts. It is hard to see how progress of moral emotions could be justified without making use of facts about human beings, facts that would resort to the real type of human nature, whose existence, Rorty denies.³⁹

But for Rorty it is not necessary to be essentialist about human nature as a condition to defend respect to human rights. The eventuality of the human is a condition that cannot be avoided. This is the pretention of foundationalists like Schaefer, who suppose, erroneously, that it is possible to assume that the end of ethical and scientific research about humans has come to an end. Stating that there is a cross-cultural foundation to deal with the topic of respect, is the same as neglecting the evolving nature of humans. The obstinate search for the last word about humanity and the world must give way to the modest proposal of inclusion of an even greater number of people traditionally excluded from recognition of their needs, in terms of rights.



Only our errable capacity
to feel empathy can draw us near
to liberal ideal of considering
that cruelty is an option that
we can and we must abandon.
Of course, we need to admit that
we can fail once and again before
we achieve it, if we do. All hope is,
after all, errable.

That would be like pretending that we have come to the end of biological evolution, like pretending that we are not only the last heir to all previous eras but the being in which they were meant to end. Analogically, since we cannot achieve the

39. *Ibíd.*, pp. 37-38



goal of perfection, we can pretend to take into consideration more needs of people than before.”⁴⁰

According to William Talbott, Rorty is an antirealist and as such, he cannot defend the moral progress that implies the defence itself of human rights, for clearly, they are progress, in moral terms, for Rorty. If moral realism is to be understood as the belief in the existence of objective moral truths, then Rorty is an antirealist when he precisely denies the existence of those truths.

Consequently, it is not possible to talk about progress unless it is considered as the narration of a realist of the story of finding new moral truths that overcome the partiality of previous approaches and expand the universality of moral principles. In Talbott words:

(...) I have discussed how the golden rule and the utilitarian principle illustrate the development of moral principles which transcend the parochial divisions of family, tribe and nation and even of the species. The same is right for basic human rights... If human rights are entitled to beings capable of autonomy, then, those rights provide us with another sample of moral principles which transcend the parochial divisions and achieve authentic universality.⁴¹

According to Talbott, if Rorty defends moral progress as a type of progress in moral emotions, then the notion of progress must have nothing to do with the truth and, as a consequence, to knowledge as well. Furthermore, talking about

progress implies that such historical process does not occur incidentally because the notion of progress is teleological and as such, it implies an objective end towards which it is directed.

I think Rorty simply uses the term progress to express his approval of the process through which rights have been extended beyond limits of race, religion and gender. But, Why does he consider this as progress if there is nothing objective to direct that improvement to? I think Rorty's answer could be that our feelings determine the standards of progress, in a way in which, contradictorily, their improvement counts as progress. This seems to me an indirect way to say that there is really no progress.⁴²

But this objection of Talbott is not as strong as it seems. According to Rorty, progress cannot be understood teleologically speaking, in such way that it is directed towards an objective goal. The only description of moral progress that can be provided can only be done if it considers the interests and goals culturally and historically given, for it is not possible to talk about moral progress but ethnocentrically.

We have certainly achieved progress according to our own thinking. That means, we are in a much better willingness to serve the purposes we wish to serve, and settle the situations we think we face, than our ancestors were.⁴³

Further on, he states that the notion of moral progress must be understood and reinterpreted as the search for a “better version of ourselves”.

40. *Ibíd.*, p. 215.

41. TALBOTT, W. *Which Rights Should Be Universal*. New York, Oxford University Press, 2005, p. 168.

42. *Ibíd.*, p. 169.

43. RORTY, R. *Verdad y progreso*. Barcelona, Paidós, 2000, p. 15.



As soon as the idea of becoming less cruel and of treating others better because they have understood human beings nature better as well as the nature of human rights, is left behind... it seems enough to define moral progress as becoming the best version of ourselves (becoming persons who are not racist, aggressive nor intolerant, etc.)⁴⁴

But for Talbott, there is a more worrying drawback in Rorty's ethical anti-foundationalism. Moral progress would imply certain level of arbitrariness Rorty cannot escape from. Human rights must be extended to the whole humanity. But, How can this extension be possible? According to Rorty, the key is to increase kindness to the others. But, Is it not arbitrary to feel empathy for someone after all? It is clear that empathy depends on the context and because of that, it could not be universally applicable. Like it happens in the film *District 9*, it is feasible, according to Talbott, that an encounter is brought about with aliens who have the same cognitive and emotional capacities that humans have, but who have the terrifying and disgusting appearance of large insects. The obvious question would be then: Would they make humans feel empathy and then, in the name of that feeling, would they be granted equality of rights? What guarantee is there that the opposite would not occur? Wouldn't humans get rid of them motivated by the feeling of repulsion they produce? Who says that humanity cannot see in that alien massacre a sign of moral progress? If the feeling of empathy rules the granting of rights and defines who has rights and who doesn't, then it would be clearly unfair not to grant rights

to certain beings that only disgust us. In conclusion, granting rights to others is not a matter to be done based on empathy.

Rorty could support the previous objection by stating that the feelings of people are modifiable and malleable through certain sentimental education and based on different narratives. A feeling like empathy can be shaped and modified through stories and documentaries that convince humans that aliens have feelings like humans do and therefore, they have the capacity to feel pain and pleasure. On this grounds, it is possible to increase the concern about these beings departing from the feeling of solidarity towards them, for their suffering would not be acceptable as a result of denying certain rights to them. For Rorty, it would not be possible, from reasoning, to treat them with respect, since, as Hume established:

It is not opposed to reasoning preferring the destruction of the whole world to having a scratch on my finger. It is not opposed to reasoning that I prefer my ruin to avoid the least possible suffering to an aborigine or to any other completely unknown person.⁴⁵

The practical or moral reasoning must not leave aside the goals and interests of the people, which are defined keeping in mind their needs and wishes. But solely from reasoning it is unimportant how the others must be treated. Only from the feeling of regarding the other person's pain as our own, the other human beings get to be part of our moral community. Justice is loyalty extended to an even more ample circle of people.

⁴⁴. *Ibíd.*, p. 15

⁴⁵. HUME, D. *Tratado de la naturaleza humana*. Madrid, Editora Nacional, 1981, p. 619.



Finally, Tugendhat may counterattack Rorty. As we have seen, for Tugendhat, respect comes before feelings and, as a consequence, other people's dignity could not be respected and granting them with equal rights could only be done from the principle of universal respect. But for Rorty, this would not be a problem. We must understand how the notion of universality is reinterpreted from its pragmatic stand. Universality is not a prior condition that determines my relation with others. It is more from a dialogic and imaginative reasoning that it is possible to think about an incentive for curiosity to start up a conversation with people who are normally excluded from a conversation, like the members of the LGBT community and certain ethnical minorities. Those interlocutors are important because they help us enrich and expand our vision of the human when showing us other beliefs not stated in our tradition. Universality would be a result of a conversation, not a prior condition to recognize the needs and interests of others, for which, we grant them with rights.

Perhaps the increase in communications between formerly exclusivist communities that these contingent processes produce may gradually, come to be universality. But I do not see in what sense this increase could be equivalent to the recognition of a previously existing universality.⁴⁶

To conclude, it seems to be that if human rights do not need a rational and universal ground, then Tugendhat's proposal cannot show as the

most plausible when it does not recognize the contingency of all the human and suppose that it is possible to escape from history as a condition to discuss the topic of morality.

When I say that my interpretation is also historical, it is not, obviously, from such a fundamental way as the case of MacIntyre. For me, as for any illustrated ethics, the specific aspect of our historical situation is that it allows and demands to set out the problem of moral in a non historical perspective, a conception that may seem absurd to MacIntyre if all moral is referred to traditions.⁴⁷

It would be necessary to add that Tugendhat's conception would also be absurd from the pragmatic and anti-foundationalist point of view of Rorty. If Tugendhat recognizes that it is not possible to provide a foundation of the moral in absolute terms, it does not imply to recognize that, as we said before, human rights are a cultural legacy to check. Without this recognition, is moral proposal is simply, authoritarian in rortian terms and, therefore, absolutist to some extent. For that reason, the alleged knowledge of a kingdom of universal moral truths cannot be a condition for the promotion of respect to human rights. Only our errable capacity to feel empathy can draw us near to liberal ideal of considering that cruelty is an option that we can and we must abandon. Of course, we need to admit that we can fail once and again before we achieve it, if we do. All hope is, after all, errable.

46. RORTY, R. *El pragmatismo, una versión*. Barcelona, Ariel, 2002, p. 120.

47. TUGENDHAT, E. *Lectures on Ethics*. London: Gedisa, 1997, pg. 202.



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