

IN DEFENCE OF MORAL PARTICULARISM AND LIBERAL PLURALISM

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Abstract. This article offers a characterization of rational universalism as the dominant paradigm in modern ethics or moral philosophy, and then goes on to point out the failings of rational universalism and, hence, seeks to demonstrate the need to adopt a rational particularist point of view as a new paradigm. In line with this, the article also aims to show how rational particularism is compatible with liberal pluralism, in the field of political philosophy. The discussion of these points of view is hugely important not only for moral and political philosophy, but also for the theory of law and legal dogmatics itself.

Key-words. Defeasibility, equity, liberal pluralism, normativism, norms or rules of conduct, principles, rational particularism, rational universalism, reasons for action, rules of thumb, situation ethics, subsumptivism, systemic perfectionism.

1. Rational universalism

We can use the term *rational universalism* to describe a model of practical reasoning which supports the possibility of the rational construction of a system of rules which is valid for all people and all life situations.

1.1. Characteristics of rational universalism

Rational universalism has three characteristics. We call the first of these *normativism*, the second *subsumptivism*, and the last *systemic perfectionism*¹.

Normativism suggests that sufficient reason for action in certain circumstances is provided by a *norm* according to which the current

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¹Cf. M.C. REDONDO, *Legal Reasons: Between Universalism and Particularism*, in: *Journal of Moral Philosophy*, vol. 2, no. 1, April 2005, pp. 47-68.

facts become relevant². The norm is *general*, which means it does not refer to a particular case, but to a set of circumstances, notwithstanding, however, that there may be differing degrees of norms (i.e. norm N1 is more general than norm N2 when the set of circumstances regulated by N1 is greater than the set of circumstances regulated by N2). The norm is also *invariable*, which means it cannot be countered by arguments of exception related to unforeseen circumstances. Finally, the norm is *mandatory*, which means the justified norm is always the best reason for action, whatever happens.

Normativism is usually associated with a subsumptive (i.e. deductive) model of practical reasoning. This is the case because the reason for action exists in each case if, and only if, that case is an instance of a relevant universal norm. In this case, the deductive syllogism – or the *modus ponens* in modern mathematical logic – is a structure which is suited to representing the existence of a reason for action in the particular case³.

Systemic perfectionism is the belief in the possibility of establishing relationships of consistency, or priority, between all the norms that make up the system.

1.2. Limitations of the rational universalism

Rational universalism reveals serious flaws in the area of practical action, insofar as it easily falls into *formalism*⁴. Let us consider this:

² The concept of norm as a kind of *reason for action* was introduced by T. M. SCANLON, *What We Owe to Each Other*, 4th, The Belknap Press of Harvard University Press, Cambridge, Massachusetts/London, England, 2000 (1st. ed., 1998), pp. 3, 19-21 and *passim*. In the meantime this concept has been adopted by different current schools on the theory of law.

³ Cf. G. H. VON WRIGHT, *On So-called Practical Inference*, (1971), now in: AA.VV., *Practical Reason* (ed. by J. RAZ), Oxford University Press, Oxford, 1978, pp. 46-62.

⁴ Immanuel Kant (1724-1804) is the representative *par excellence* of formalism in the field of moral philosophy. Regarding imputing consequences to agents, Kant claimed: "The good or bad consequences arising from the performance of an obligated action – as also the consequences arising from failing to perform a meritorious action – cannot be imputed to the agent (*modus imputationis tollens*). The good consequences of a meritorious action – as also the bad consequences of a wrongful action – may be imputed to the agent (*modus imputationis ponens*)" (I. KANT, *Metaphysische Anfangsgründe der Rechtslehre*, 2nd ed.,: Friedrich Nicolovius, Königsberg, 1798 [1st ed., 1797], p. XXX [*Einleitung in die Metaphysik der Sitten*, IV]; and now in: (ed. by

Firstly, rational universalism rejects the possibility of abandoning the reason for action even if the due action contradicts our intuition as to what the fairest thing to do would be in that particular case. Aristotle (384 BC - 322 BC) had already drawn attention to this issue, in this case opposing the prevalence of universal reason over *equity* (*Ethica*

Königliche Preußische Akademie der Wissenschaften), Kant's Gesammelte Schriften, vol. VI, 1st subdiv.: *Werke*, tome VI: *Die Metaphysik der Sitten*, Georg Reimer, Berlin, 1914, [pp. 203-493] p. 228. *Metaphysische Anfangsgründe der Rechtslehre* is the first part of *Metaphysik der Sitten*). In other words, bad consequences are only the work of the person when he commits an action or omission contrary to the obligation and the obligation, in turn, is established only according to strict rules and principles, such as: "You shall not lie". Kant went as far as to state that if somebody told a lie to baffle a killer who was chasing someone, but that person ended up dead, because of the lie the liar would be responsible for the death of the person (together with the murderer, of course). We can read the relevant passage from the famous opusculum *On a Supposed Right to Lie because of Philanthropic Concerns*: "However, if you told a lie and said that the intended victim was not in the house, and he has actually (though unbeknownst to you) gone out, with the result that by so doing he has been met by the murderer and thus the deed has been perpetrated, then in this case you may be justly accused as having caused his death" (I. KANT, *Über ein vermeintes Recht aus Menschenliebe zu lügen*", now in KANT'S GESAMMELTE SCHRIFTEN (ed. by Königliche Preußische Akademie der Wissenschaften), vol. VIII, 1st subdiv.: *Werke*, tome VIII: *Abhandlungen nach 1781*, Walter de Gruyter, Berlin/Leipzig, 1923, pp. 423-430) p. 427. The same idea, illustrated by another example, can be seen in *Metaphysische Anfangsgründe der Tugendlehre*, now in: *Akad. Ausgabe*, vol. VI, 1st subdiv., tome VI, cit., p. 431. *Metaphysische Anfangsgründe der Tugendlehre* are the second part of *Metaphysik der Sitten*). Neither the fact that the result was unintentional, unforeseeable and absolutely random, nor the fact that another agent intervened directly and intentionally in causing the victim's death are sufficient reasons, in Kant's eyes, to remove the imputation of the victim's death from the author of the white lie (cf. TH. E. HILL, Jr., *Kant on Responsibility for Consequences*, in: AA.VV., *Jahrbuch für Recht und Ethik – Annual Review of Law and Ethics*, vol. 2 (ed. by B. SHARON BYRD, J. HRUSCHKA, J. C. JOERDEN], Duncker & Humblot, Berlin: 1994, pp. 159-176, especially pp. 162-163, 167 and 174. In the same volume of *Jahrbuch für Recht und Ethik*, cf. A. REATH, *Agency and the Imputation of Consequences in Kant's Ethics*, pp. 259-281, especially pp. 259-261, 264, 269-280). The intention here is not to discuss this point of view, but rather to conclude that Kant allowed no room for assessing action according to its consequences.

Nicomachea, Liv. V.10, 1137b11-24)⁵. Some modern philosophers term this possibility of derogating from written justice *defeasibility of the norm*⁶. Some universalists will be willing to yield a little regarding their principle in order to include a certain amount of versatility in their scheme of thinking. Thus, they would say that the norms themselves are not defeasible, but they accept the possibility of abandoning the reason for action based on the justified norm if the extraordinary circumstances of the particular case mean that the due act is not advisable⁷. This is also what moderate universalists tend to say in the specific field of legal rationality and positive law.

Yet, there is still another difficulty, which greatly affects the perspective of rational universalism. The issue is this: the actual concept of a norm in a universalist structure implies that that norm must have content which can be identified independently of the individual cases. Norms govern individual cases precisely because they pre-establish what should be done. If the identity of the norms depended, in some way, on the individual cases, then the claim that the norms govern those cases would be rather strange. Hence, the issue of exceptions to the (reason for action according to the) norm of conduct based on the extraordinary circumstances of the particular case raises the more general issue of knowing whether all norms of conduct will not, after all, always depend on the *circumstances of the individual case*⁸.

2. Situation ethics and rational particularism

The idea that the circumstances of the individual case determine the reason to act sits well with so-called *situation ethics*. Situation ethics is

⁵ Cf. ARISTOTLE, *Nicomachean Ethics* (translation and historical introduction by Sarah Broadie and philosophical introduction and comments by Christopher Rowe), Oxford: Oxford University Press, 2002, p. 174.

⁶ The word 'defeasible' was used by Herbert Lionel Adolphus Hart (1907-1992) to define the nature of the norm which deals with situations which cannot be perfectly universalized: "the Law has a word which with some hesitation I borrow and extend: this is the word 'defeasible'" (H. L. A. HART, *The Ascription of Responsibility and Rights*, originally in: *Proceedings of the Aristotelian Society* 49 (1948-1949), pp. 171-194, now in: AA.VV., *Logic and Language* (ed. by A. FLEW), Basil Blackwell, Oxford, 1968, pp. 145-166, 148.

⁷ Cf. M.C. REDONDO, *Journal of Moral Philosophy*, vol. 2, no. 1, April 2005, cit., pp. 47-68.

⁸ *Ibidem*.

a model of reasons for action based on *rational particularism*⁹. A particularist will say that uniform and invariably relevant circumstances do not exist. On the contrary, the same circumstance may be a reason for action in one particular case or a reason against action in another, or it may be completely irrelevant in yet a third case¹⁰. The context of the action explains the different roles that the same circumstance may play in practice. Particularists need not be intuitionists and absolute irrationalists¹¹. In fact, particularists may even be rationalists up to the point of believing in norms of conduct as being reasons for action. However, these norms of conduct will only serve as place-markers or rules of thumb¹².

2.1. Function of rules in rational particularism

Here we may cite John Stuart Mill (1806-1873), who clearly explained the reasons for using rules, despite stressing that sensible people always consider all rules of conduct as being provisional. Having been created for the majority of cases, or for normal cases, rules indicate the least harmful way of acting when we neither have the time or the necessary means to analyse the circumstances of the particular case, or when we cannot trust in our capacity to examine them correctly (*A System of Logic*, Liv. VI, cap. XII, §. 3)¹³. Rules serve, then, as heuristics to save time and reduce the risk of error when deciding what should be done. Why do rules have this heuristic potential? It is because a rule can be examined calmly based on the best available information about the factors which will probably be at play in imagined situations. The rule therefore establishes what should be done in those situations

⁹ The name and the concept were presented by J. DANCY, *Ethics Without Principles*, Clarendon Press, Oxford, 2004, p. 7 and *passim*.

¹⁰ *Idem*, pp. 15-37.

¹¹ In the style of Scottish moral philosophy, highlighting Reid's intuitionism (cf. O. MCKENDREE JONES, *Empiricism and Intuitionism in Reid's Common Sense Philosophy*, Princeton, Princeton University Press, 1927, p. xiii).

¹² Cf. J. RAZ, *Practical Reason and Norms*, Hutchinson, London, 1975, pp. 59-62. In the field of legal reasoning, cf. F. SCHAUER, *The Jurisprudence of Reasons*, in: *Michigan Law Review*, vol. 85, nos. 5-6, April-May 1987, pp. 847-870, 866.

¹³ Cf. Collected Works of J.S. MILL, vol. VIII: *A System of Logic Ratiocinative and Inductive – Being a Connected View of the Principles of Evidence and the Methods of Scientific Investigation*, 1843 (ed. by J. M. ROBSON and introduction by R. F. McRAE), Books IV-VI and Appendices, Toronto/Buffalo, Routledge & Kegan Paul, University of Toronto Press and London, 1974, p. 946.

according to a relative weighting of the anticipated reasons. If one of these situations actually occurs, the person for whom the rule is intended may rely on it, thereby saving time and effort, and also reducing the risks associated with errors of judgement, which always exist when the pros and cons of a given situation are considered in a hurry. These reasons determine the nature of the rules themselves. Namely, they cease to be useful when we have all the time in the world available to us, or when we can count on the advice of the best experts and when the use of our time and the time of the experts does not lead to other undesirable results. This in itself will be reflected in the specification of the conditions for applying the rules. Justified rules only apply when there is a need to take a quick decision, or when we are subject to pressure or temptation, and so on, depending on the nature of the rule and situation to which they should be applied. It has often been said that these rules are only necessary because of human imperfections. Where there is rationality and full information there would be no place for these rules. This is a mistake. Notwithstanding the fact that human fallibility is the main reason for having rules, it is not the only reason. Discovering the facts and considering the different reasons for action take time and effort, and these are costs that have to be considered, even in situations of infallibility, against the marginal benefits, which could result from a full assessment of the situation and its merits. These rules are, therefore, necessary even in ideal situations¹⁴.

Rational particularism may also use a deductive model of practical reasoning. However, a particularist will only use this model if, within the context of the case, he finds no reasons to derogate from the guiding norm.

2.2. Rational particularism and liberal pluralism

Even more complex is the issue of knowing if all people, provided they are rational and sensible, are destined to discover the same moral response for life situations or if, on the contrary, there is room for different responses, depending on their legitimate cultural idiosyncrasies. The modern ideals of *liberal pluralism* – which we defend – imply the possibility of there being more than one equally fair and equitable response for many life situations where we choose a reason for action in a certain way¹⁵. For example, can a doctor, faced with the

¹⁴ Cf. J. RAZ, *Practical Reason and Norms*, op. cit., pp. 59-60.

¹⁵ For all, cf. AA.VV., *Pluralism: The philosophy and politics of diversity* (ed. by M. BAGHRAMIAN and A. INGRAM), Routledge, London/New York, 2000, passim.

duty of saving a patient, take blood from a third person, using physical coercion, in order to provide the patient with the only life-saving transfusion possible in that context? There are no absolutely satisfactory responses for situations of this kind. Furthermore, often we do not have the option of doing nothing, as this might be a choice which is clearly bad in certain contexts.

Liberal pluralism does not preclude the possibility that members of a culture may be capable of erecting a *political community* which guarantees, as far as is possible, the integrity of their values of justice and fairness, according to the idea put forward by Ronald Dworkin (b. 1931)¹⁶. Yet neither does it prevent, to paraphrase Isaiah Berlin (1909-1997), the members of a culture, thanks to an effort of introspection, from being capable of understanding the values, ideals and ways of life of another culture or society, including those which are very distant either in time or space. We may believe these values to be unacceptable, but, with our eyes wide open, we may actually manage to understand how somebody can operate in the light of values which are different to our own¹⁷.

3. Conclusion

The challenge of our time is to accept the complex relationship between the objective pluralism of moral values and the integrity of a liberal community of citizens in which republicanism and multiculturalism complement each other, thereby closing the door to moral relativism.

¹⁶ Cf. R. DWORKIN, *Law's Empire*, The Belknap Press of Harvard University Press, Cambridge, Massachusetts/London, England, 1986, pp. 176-224.

¹⁷ Cf. I. BERLIN, *On the Pursuit of the Ideal* (1988), now in: *The Crooked Timber of Humanity*, John Murray, London, 1990, p. 10.