

# Is there a place for what isn't fair? A proposal for the justification of moral judgements

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## Abstract

The purpose of this essay is to reflect on the problem of moral justification and its relation to the idea of justice. It is argued that, as a predicate of moral judgments, the idea of justice involves two ethical requirements articulated among themselves: the first indicates the aspiration to guarantee a non-arbitrary meaning for the norms that we ought to obey; the second reflects an emphasis on the doubly consensual character and universalizability of these norms. Finally, it is concluded that the challenge of reciprocal consent, a condition for normative consensus, is linked to a constructive sense of morality, around which the notion of justice can assume an equally pedagogical value for moral agents.

**Keywords:** Morals. Ethics. Ethical theory. Decision making. Ethical analysis.

## Resumo

### Tem cabimento o que não é justo? A propósito da justificação dos juízos morais

O propósito deste ensaio é refletir sobre o problema da justificação moral e sua relação com a ideia de justiça. Argumenta-se que, enquanto predicado dos juízos morais, a ideia de justiça envolve dois requisitos éticos articulados entre si: o primeiro assinala a aspiração a garantir sentido não arbitrário para normas a que devemos obediência; o segundo reflete a ênfase no caráter duplamente consensual e universalizável dessas normas. Por fim, conclui-se que o desafio do consentimento recíproco, condição para o consenso normativo, está ligado ao sentido construtivo da moralidade, em torno do qual a noção da justiça pode assumir valor igualmente pedagógico para os agentes morais.

**Palavras-chave:** Princípios morais. Ética. Teoria ética. Tomada de decisões. Análise ética.

## Resumen

### ¿Tiene cabida lo que no es justo? A propósito de la justificación de los juicios morales

El propósito de este ensayo es reflexionar sobre el problema de la justificación moral y su relación con la idea de justicia. Se argumenta que, como predicado de los juicios morales, la idea de justicia involucra dos requisitos éticos articulados entre sí: el primero señala la aspiración de garantizar un sentido no arbitrario para las normas a las que debemos obediencia; el segundo refleja el énfasis en el carácter doblemente consensual y universalizable de esas normas. Finalmente, se concluye que el desafío del consentimiento recíproco, condición para el consenso normativo, está ligado al sentido constructivo de la moralidad, en torno al cual la noción de justicia puede asumir un valor igualmente pedagógico para los agentes morales.

**Palabras clave:** Principios morales. Ética. Teoría ética. Toma de decisiones. Análisis ético.

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Declaram não haver conflito de interesse.

*The generality of justification, the need to be able to formulate judgment from commonly identifiable signs, the requirement to break it down to impute responsibility to this or that human agent (...), all these characteristics lead to understand the states of the person according to a general qualification.*

Laurent Thévenot<sup>1</sup>

As in some books of introduction to ethics, it is opportune to begin this essay with a brief reflection on the difference that moral judgments assume in relation to other prescriptive judgments. For this, let us suppose that there is a child in full process of moral socialization. And that it's time for dinner. In the face of his carelessness in making proper use of the cutlery, we might ask the child, for example, to correct his conduct. But what would we feel if the child said that he had intentionally hurt a classmate? We would certainly have the child fix the damage caused. But what would we have to say if the child questioned that order? Would we say that it is because it is something as wrong as using the cutlery improperly?

For many students of the moral phenomenon, this is the kind of question that seems to touch the core of morality. For even if we could - as indeed we can - point out the "error" in the inadequate use of cutlery, the judgment of such conduct would hardly have the *same reason* as the censure of violence. The difference, however, would not lie in the mere gradation of what would be morally "more serious", but in the very qualitative distinction that separates the sphere of morality from the scope of other social conventions.

We can now test this hypothesis by asking ourselves what we would do, for example, if the infant at the table were now the child of a foreign friend, whose etiquette habits include eating with their hands. We would probably not do anything. But what would we feel then if this child were also the one to confess the aggression? Would we not feel that such conduct deserves to be equally repudiated by his father? Everything points to an affirmative answer.

In the first case, we have the example of an obligation that is only relative, merely pertaining to conventional behavior. We may, in fact, wonder at the way the foreign child behaves at our table, but this strangeness would at best no go beyond an exclamatory reaction. In the second case, however, we feel as if a stronger bond had been broken, of which the value did not depend on the culture to which we belong. We feel, therefore, as if an absolute obligation had not been duly observed. Moral judgments thus seem to involve a claim to

universal validity. That is why we feel indignant when what we judge morally as the "right thing to do" becomes the target of violation.

Of course, these examples are not enough to understand the complexity of the moral phenomenon. They reveal only the essential characteristic of moral judgments. Sentences like "we should not beat our classmates" are moral because they seem to contain a definitive prescription, an indisputable rule, so to speak. Examples of such statements are also legal judgments, but these are only indisputable because they are punishable by the authority of the judge, who holds the power to distinguish "right" and "wrong" in relation to the law.

However, just as with other social conventions, moral judgments can also express different perspectives of what is "right" and "wrong." In this case, the problem is that the pretension of universal validity of this type of judgment ends up causing serious conflicts between people. Since then, this sphere of mutual demands created by the existence of moral judgments also demands that we justify them. It is no longer enough, therefore, to say that this or that conduct is "right" or "wrong", but it is also necessary to explain why.

Turning back to the case of the first example, it now seems evident that in terms of explaining to our child why he should repair the damage made to his colleague, we are seeking to show him a morally justified perspective of what we believe to be right and wrong. As can be deduced, such an explanation is very different from pointing out the appropriate rule for the use of cutlery. Naturally, we may be irritated if our son does not behave the way we expect, but the sense of that irritation is completely different from what we experience when we know he assaulted his colleague. As already suggested, it is possible to describe such affection as authentic moral indignation.

And why do we feel indignant? Is it because the rule that "we should not beat our classmates" was not followed? It does not seem to be that simple. If it were, we would have to agree that the rule on the use of cutlery is as important as that which says that we should not assault people. More likely, therefore, we are indignant because, in our moral perception, the physical integrity of people is something that behaves in itself a "good," that is, *prima facie* something we would not be willing to give up. If this formulation is correct, then we already have a first definition of what it means to justify moral judgment: it is to explain why we should value something as a "good."

However, we should not yet be completely satisfied with this definition. Although it does indicate what it means to justify a moral judgment, it is not so clear how we can start from the very concept of “good” as a morally self-evident notion. In the case of the physical integrity of people, especially those in our close circle (as a classmate, for example), it seems obvious that the duty to preserve it represents in itself a good. Nevertheless, there are many ways to morally understand this obligation. It is important to emphasize that the reference here is not to the metaphysical problematic of “good in itself”, but to the absolute value that we attribute to certain things in themselves.

A utilitarian, for example, could say that this duty represents a good because the capacity we have to experience pain and pleasure imposes on us the condition that we do not cause suffering (harm) to those we also know to experience them - particularly when this involves someone from our close emotional circle. In this moral perception, therefore, the foundation of this duty concerns the intrinsic constitution of human nature, which includes, in addition to affective availability, the functioning of the nervous system capable of transforming certain sensory stimuli into satisfaction or physical suffering. However, we know that this is not the only way to argue in favor of people's physical integrity, much less when it comes to explaining in what sense the duty to preserve it would represent a benefit.

For an example under other parameters, one can then think now of what would a religious man, say of the Christian faith, whose belief is referred to the unquestioned authority of God. For this man, it is the commandments dictated by such a transcendent entity that ultimately determines the foundation of his moral duty. To be sure, he may even agree with the utilitarian thesis that we are sentient beings, but the benefit attached to the duty to preserve the physical integrity of people would not be exactly the result of our ability to experience pleasure or suffering. It is not nature, therefore, that would determine the value of people's physical integrity as a “good”, but the fact that it has already been determined by divine will.

It has been said previously that it does not seem so clear how one can start from the concept of “good” as a morally self-evident notion. However important his position in our moral vocabulary, his employment as the foundation of morality is marked by no trivial ambiguities. We believe we have also demonstrated, on the basis of the examples, one of the reasons that can contribute to this. However, there is at least one other reason

for this ambiguity implicit in the notion of “good” when it comes to moral justification, especially concerning its argumentative validity through the use of expressions such as “good” or “bad.” As we shall see below, this reason becomes more explicit when one compares the use of these same predicates in relation to another central concept of moral discourse: the concept of “just.”

The hypothesis, however, is not that the idea of justice is, in turn, a morally self-evident notion, but rather that it seems to place more objectively the problem of moral justification when morality is considered as a sphere of mutual demands. In fact, to delimit the idea of justice in this way does not mean to establish, *a priori*, distributive or corrective criteria for the equation of social life, because first it is to investigate to what extent this idea can play the irreplaceable predicate of moral judgments.

### The idea of justice and moral judgments

In “Reflections about what it means to justify moral judgments”, the German philosopher Ernst Tugendhat<sup>2</sup> develops an insightful analysis of this hypothesis. For him, what we think we can define as “good” or “bad” does not seem to elucidate theoretically the program of moral justification because, to begin with, such predicates are not precise enough to determine the meaning of indignation when inserted in the social framework of mutual demands. We can, no doubt, be annoyed at situations that threaten our defense of what is “good.” However, it is only when this same defense comes from a shared belief in the “good” that it represents (that is, why we should value it as such) that we could explain to the other members of the moral community the just cause of our indignation.

In other words, even though many episodes of everyday life may cause us irritation, those to whom we direct this emotion will not always agree that the meaning of their actions means “bad.” On the contrary: it is often in the name of different views about the benefits and harms in question that countless conflicts and mutual accusations of injustice occur. The idea of justice, thus fulfilling the function of safeguarding the *balance of the system among individuals*<sup>3</sup>, would tend to lead to the conception of “right” and “wrong” only presumed in the form of reciprocal rights and duties. As if it were now the very integrity of the moral community - henceforth understood as “collective autonomy” - the value in view in which the utmost respect must be placed. In the words of Tugendhat:

*What does "just" mean, then? I think justice is the opposite concept of power. We must distinguish a normative order to which we are subordinated by power, by the threat of external punishments (as if we were slaves) of a just normative order. And it seems to me that the only way to define a just normative order is to think that individuals have themselves imposed this order<sup>4</sup>.*

According to this view of Tugendhat, therefore, a judgment seems morally justifiable only when the feeling of indignation related to it refers to abuse committed against collective autonomy, that is, whose practice would express disrespect to the constitutive order of reciprocity of that system. Thus, to justify a moral judgment would not consist merely in *explaining for which reason we should value something as a good*, except when the same explanation may be recognized by *all*. Based on this perspective of morality as a portrait of the collective autonomous system, *if an individual violates such a moral system to which one belongs, one violates one's own rules, which are equally everyone's rules<sup>5</sup>.*

According to Tugendhat, it is still in this sense that guilt can be interpreted as a morally correlated phenomenon of indignation, that is, from which the emotional awareness of being the object of one's own repulsion could only result from this same social experience. In this context, supposing justice as a predicate of moral judgments suggests, *mutatis mutandis*, the presence of two ethical requirements articulated among themselves: 1) the aspiration to guarantee non-arbitrary meaning for norms to which we owe obedience, which excludes any attempt to substantiate the moral in conception of "good" that is not shared; 2) the emphasis on the doubly consensual and universalizable nature of these norms. By all indications, only then does it really seem possible to determine what would be morally obligatory and, by extension, what might or might not be justifiable.

Many students of morality claim this demand for justification to be tied to the question of autonomy, another important characteristic of moral discourse. In part, the origin of this correlation is explained by the symbolically interactive dynamics of the socialization of individuals. Such dynamics can be described, in psychosocial terms, as a gradual process of assimilation of the norms of social life. By actively living this experience, children learn to react to their own emotions as well. The question about the "why" of the rules then determines the center of their expectations, whose satisfaction is guided by the desire to freely

exercise their autonomy. In this way, the more they found an environment marked by the appreciation of their questions, the more they would also be able to understand the need to justify ourselves to others as a factor of reciprocity and cooperative engagement in social life.

Indeed, it may be objected that the result of this last comparative exercise has omitted aspects that are not irrelevant to the moral debate. At first, the thesis, by virtue of which the explanation of moral indignation must be deduced from the premise of collective autonomy, seems to see with much optimism both the capacity of moral agents to recognize themselves as equal and the sensitivity to include other beings as objects of moral consideration. This latter criticism has also been addressed to contractarianist and communitarian theories of justice and contains at least three complementary arguments.

The first one calls into question the idea that moral justification must admit as the sole foundation the necessary link between the validity of moral judgments and the requirement of mutual consent. The central point of this type of questioning is not to refute the perception that the violation of agreements can morally justify the feeling of indignation (as well as the judgments related to it), but rather the conception that only on the basis of the consensus forecast is possible determine the moral value of our indignation. This would mean, in principle, to subordinate the realm of morality to the sphere of judgment essentially characterized by cultural affinities or political definitions.

The second argument aims to complement this diagnosis. After all, if the legitimacy of moral judgments depends solely on reciprocal consent between autonomous moral agents, then one must assume that many individuals would be prevented, at least as a source of that same legitimacy, from integrating the moral community. In practice, therefore, thinking of morality in the perspective of a collectively autonomous system would exclude not only every person who has their deliberative autonomy compromised (as in cases of certain deficiencies or conditions of extreme social vulnerability), but also any other object that we may deem worthy of our moral esteem, such as animals, the environment, and so on. For this reason - hence the third and most conclusive argument - it does not seem reasonable to dismiss the use of predicates as "good" and "bad" so easily. To a certain extent, they could represent precisely the less narrow view of justice.

In fact, the arguments sketched out reinforce the impression that the problem of moral justification requires permanent attention to the philosophical coherence we seek. More than a simple matter of inferential cohesion, it is a matter of evaluating how the assumptions adopted correspond to the expectation of analysis guided by some degree of hermeneutic resilience. In this sense, to think the core of morality as something related to the capacity to be indignant should again lead to the question of the conditions that make it possible to share that feeling itself.

Thus, however fertile the arguments against the consensual character of moral justification now seem, it also seems obvious to imagine, on the other hand, that we could hardly *share* without the audience of those whom we would justly like to persuade. And this implies, somehow, having already admitted people *able to consent* as “affective recipients”. As Perelman rightly argued, *if the criteria and norms on whose behalf a criticism is formulated are not unanimously accepted, if both their interpretation and application to particular cases can be the subject of dissenting judgments, the quality and competence of interlocutors becomes an essential element and sometimes even prior to the debate*<sup>6</sup>.

Of course, this warning should not serve to nullify the claim of one who assumes morality beyond what may or may not be the result of consensus. However, in demarcating the field in which disputes actually arise because of the morally justifiable, the implications in the present could hardly be answered. In this respect, if there is reason to conclude in favor of the primacy of the idea of justice in matters of moral justification, it is only because no other concept seems to replace it when it comes to guarantee, first, the voice of all those who, being effectively capable, one should be sure that autonomously occupy their space in the debate.

Again, therefore, this is the priority affirmation of law, the value of which is imperative from the point of view of the very public nature of moral argumentation. In such circumstances, it matters little whether we are convinced that our subjective feeling points to a “good” to be pursued or an “evil” to be avoided. Without subjecting it to the sieve of reciprocal consent, other moral beliefs could enjoy the same axiological privilege - “prerogative” that may even cost our deepest and most mutual repudiation.

In order to clarify these considerations, perhaps we should now take the example of a concrete case that took place in the 1990s in Spain. The case inspired the production of the film “The

Sea Inside” (“Mar Adentro,” in the original title), starring actor Javier Bardem. The film shows the drama experienced by Ramón Sampedro, a former sailor and writer whose life was marked by a tragic accident that left him quadriplegic. After nearly 30 years in bed in the house where he lived, Ramon, who was also an atheist, then decides it's time to leave. To this end, he decides to make his decision equally public, with the purpose of transforming his cause in a defense of the concept of dignified death.

His family, however, does not accept the situation. His brother is the greatest opponent, for whom the option to bid farewell to life represents irrefutable evil. Around this view, other people in society also make a point of disapproving Ramón's desire (Ramón took his case to court; however, the Spanish courts did not authorize his euthanasia). In general, the arguments seek to justify this censorship not from a conduct interested in listening to the former sailor, but in the conviction that the only right thing to do is to preserve life as a “good”, that is, something of which it would be strictly forbidden to give up.

At one point, the film comes to show the clash between Ramón and an equally quadriplegic priest, who tries to convince him, without success, of the “sin” in turning against life, a gift conferred by God, so that only the He should dispose of it. It is understandable, therefore, that the outcome of the case in question involved other people who, being initially against Ramón's will, helped him clandestinely with his decision after finally re-evaluating the meaning of their own subjective beliefs.

From the point of view of moral argumentation, the description of this case marks emblematically what we seek to demonstrate here. In general terms, it suggests that the fact that we possess the property of being indignant, in spite of its importance to the realm of morality, does not mean that the judgments arising therefrom are automatically justified. As professor Colin Bird points out, *what we need to know is not whether people are actually persuaded, but if they should be*<sup>7</sup>.

Stated in this way, it seems easier to conclude that the problem of moral justification was not properly understood by those who resisted Ramon's desire. Unsurprisingly, they were so convinced of the “evil” represented by the former sailor's will that they gave no chance for true dialogue. In this respect, it is unnecessary to speculate from what point of view the “good” and “bad” predicates could be applied in such a situation; after all, why should we conclude that Ramón's decision does



not represent a benefit? Even before the predicates could be evaluated, the principle of collective autonomy - a synonym of a just normative order - was not admitted as value.

### Normative consensus as a horizon of moral justification

There is no doubt that the approach to the Ramon case raises again the problem of normative consensus as the only permissible horizon of moral justification. In this sense, it seems advisable to look more closely at the meaning of this horizon for purposes of argumentation. In fact, to argue is to present reasons with the objective of sustaining judgment before the audience, the latter being also constituted by autonomous interlocutors. The idea of consensus, therefore, would fulfill the expectation that the product of this dialogue always corresponds to the *fair result*, since all the parties pleading would have consented to its consequences.

In theory, this is equivalent to saying in, Tugendhat's terms, that all those involved would have the same motive for accepting them<sup>8</sup>. Therefore, to think of justice as a predicate of moral judgments would mean still thinking in the very conditions that would ensure the autonomy of individuals in a regime of normative reciprocity. The only valid consensus on moral argumentation would be the one by which the acceptance of a world marked by mutual demands implies accepting such a requirement as well.

It is clear, however, that this way of interpreting the problem of moral argumentation is viewed with hesitation and suspicion. The reason is due to the supposed restriction of the "method", whose process would indicate hierarchy, not only difference, between agents and concerned: on the one hand, those who must (or can) take part in the communicative process, on the other, those who run the risk of not being subject to moral consideration. The difficulty would then be to exclude the interest of several other beings whose list of functionalities does not include the power of argumentative deliberation.

Moreover, supposing reciprocal consent as the only horizon of moral justification could allude to the dangerous bet on the idealization of consensus as something necessarily representative of what we are accountable for. In sum, even supposing that the only valid consensus originates in a regime of normative reciprocity based on the free exercise of individual autonomy, the image of such a deliberative regime

as a pertinent ground for moral argumentation seems questionable, if not utopian.

Adhering to this criticism does not render less problematic the need to treat morality as a matter, as it were, *something to be deliberated*. And that brings us back to the question of how we can make dialogue the platform of intersubjective experience towards consensus. The question of what should be equally good for all, typical of reasoning inspired by the idea of a just order, thus seems to lead to the primordial representation of morality as a socially communicative exercise, whose integrity will also depend on how much we are capable of making it structurally and politically, increasingly broad and inclusive. For Habermas, for example, far from incurring a kind of philosophical idealism, this is the challenge that touches precisely on the "practical" aspect of the problem. As he explains in a passage dedicated to the theme:

*It is only as participants in a comprehensive and consensus-oriented dialogue that we are called to exercise the cognitive virtue of empathy in relation to our reciprocal differences in the perception of the same situation. We must then seek to know how each of the other participants would seek, from their own point of view, to universalize all the interests involved. Practical discourse can thus be understood as a new specific form of the Categorical Imperative. Those who participate in such a discourse can not reach an agreement that suits the interests of all, unless they take the exercise of "taking each other's points of view", an exercise that leads to what Piaget calls a progressive "decentralization" "Of the egocentric and ethnocentric understanding that each one has in himself and the world"<sup>9</sup>.*

This reference to Piaget's work seems to be closely related to the way Habermas interprets the practical meaning of mutual respect and what the famous Swiss psychologist claims to be in the very origin of the sense of justice. According to Piaget, the development of *the no doubt most rational of moral notions*<sup>10</sup> is linked, above all, to the feeling of solidarity among peers. Differently from other moral rules, whose learning most clearly involves the ascendancy of the power of authority, the sense of justice is determined, for Piaget, by conflicts experienced directly with adults.

The child, recognizing an imbalance in this relationship, learns to express his indignation as a form of solidarity to his "equals", that is, to those with whom he usually has a less heteronomous bond of cooperation. While admitting some influence of the

precepts and practical examples of the adult, Piaget concludes that *it is almost always at the expense and not because of the adult that the notions of the just and the unjust are imposed on the child*<sup>10</sup>.

It is hard to say how much Habermas agrees with this peculiar thesis by Piaget. Nevertheless, since the problem of justice is thought of as *the law of the equilibrium of social relations*<sup>11</sup>, it should be clear that, in the case of social relations between autonomous moral agents, it must again be remembered that nothing else is essential (solidary?) but the principle of reciprocal consent. From the point of view of moral justification, this is because, for Habermas, to think of consensus as the foundation of morality only makes sense insofar as the attribute of universality is also part of the normative pretensions of the practical discourse.

If we look closely, this does not mean that we should suppose a great “universal assembly” as a condition for validating moral norms, but that the argumentative context takes into account the possibility of universalizing these norms by submitting all the interests involved. Once again, Habermas is surgically precise here:

*A normative consensus, formed under conditions of free and universal participation in the context of a practical discourse, establishes a valid norm (or confirms its validity). The “validity” of a moral norm means that it “deserves” universal recognition by virtue of its ability to, through reason alone, obtain the consent of the will of those to whom it is directed. The moral world that we - as moral people - have to produce together has a constructive sense. This explains why the projection of an inclusive social world, characterized by ordered interpersonal relations between the free and equal members of a self-determining association - a translation of Kant’s Reign of the Ends, can in fact replace the ontological reference to an objective world*<sup>12</sup>.

As we can see, it may now become more evident that the constructive sense of morality does not mean that a normative consensus is merely a protocol of reciprocal concessions, or “democratic” apology for the majority vote, but rather a practice around which each moral agent can be exactly as such in relation to others. This image is certainly more pragmatic than any other moral perspective. What it teaches us in the first place is that, just as it is not possible to justify our moral judgments by analogy to empirical judgments, it does not seem reasonable to seek to justify them on the basis of arguments of authority - however this may be disguised.

Second, it also teaches us, therefore, that to think justice as a predicate of moral judgments requires the permanent mobilization of communicative reason in respect of the pretensions of all the interests involved. It is noteworthy that we disagree, therefore, with the criticism made by Tugendhat to Habermas in the chapter dedicated to the ethics of discourse in his “Lessons on Ethics”<sup>13</sup>. Unless one gives up the very question of justification of moral judgments, the idea that some decisions should not take into account the participation of all those involved is unfounded. In this sense, it does not seem plausible to expect anticipation of “morally justified judgment” without the guarantee of the autonomous participation of those who, if they are involved, should take part in it.

In methodological terms, this applies both to contractarianist morals, linked to issues of distributive justice, and to models of decision-making directed toward the resolution of specific moral conflicts. Here, moreover, it is clear that the word “consent” (in a bold translation: the ability to feel-with!) goes back curiously to the idea of non-excluding affectivity, without which the “cognitive virtue of empathy” would not be a morally rational quality.

Returning to the story of Ramón Sampedro, let us remember that the episode of the clash between him and the Catholic priest involves a structural impasse experienced by moral agents in situations of irreducible heteronomy. According to the reflections developed so far, such situations are only conceivable in the context of child moral development. In the case of established moral relations between adults, however, it seems inconceivable to think of this kind of experience under the category of *just situation*.

A fallacy-prone moralist might point out that, based on this criterion, we can not say that Ramón’s decision is morally justified. Apparently we do not see how this point can be refuted, but we also do not see why it would *need* to be. If the consensus was not possible in the case of Ramón, it was solely due to the *inability* of its interlocutors to obtain their consent. The contrary hypothesis does not apply, since the normative pretension of Ramón was not to force nobody to anything but to recognize his own right to a dignified death.

The universalization test here suggests that the integrity of the moral community, that is, the presumption of “collective autonomy,” was not compromised by the nature of Ramón’s claim (who, moreover, proposed a public debate on his decision), but by the resistance of those who opposed it in the name of private belief. On this point, in particular,

Rawls is precise: *To have the right to object to the conduct or belief of others, we must show that their actions harm us*<sup>14</sup>.

In short, Ramón's claim did not pose any threat to the individual autonomy of his interlocutors, while he himself was constrained to a clandestine exit to the impasse in which he was. Thus, it seems very implausible to deny the fact that it was he, Ramon, who was the only party aggrieved as an autonomous moral agent.

### Final considerations

Indeed, to think the relation between the problem of justification of moral judgments and the

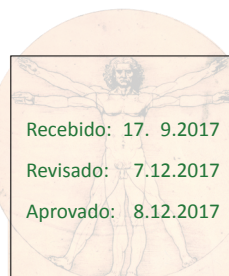
challenge of consensus requires an understanding of the very condition of eligibility of normative contents. From the point of view of moral theory, this approach has been generally classified as a "procedural" perspective, and its structure can be interpreted, philosophically, as a methodological emphasis on principles that should regulate consensus. However, since these same principles can also be seen as an expression of what Habermas called the "cognitive virtue of empathy", it is appropriate not to underestimate its pedagogical value. If the notion of justice fulfills more effectively the moral stimulus to the practice of this virtue, then it seems opportune to bet on it as the idea that best fits the predicate charge of moral judgments.

### Referências

1. Thévenot L. Justificação. In: Canto-Sperber M, organizador. Dicionário de ética e filosofia moral. 2ª ed. São Leopoldo: Unisinos; 2013. p. 582.
2. Tugendhat E. Reflexões sobre o que significa justificar juízos morais. In: Brito NA, organizador. Ética: questões de fundamentação. Brasília: UnB; 2007. p. 19-35.
3. Tugendhat E. Op. cit. p. 32.
4. Tugendhat E. Op. cit. p. 27.
5. Tugendhat E. Op. cit. p. 26.
6. Perelman C. Ética e direito. 2ª ed. São Paulo: Martins Fontes; 2005. p. 188-9.
7. Bird C. Introdução à filosofia política. São Paulo: Madras; 2011. p. 27.
8. Dias MC. Justiça social e direitos humanos: ensaios filosóficos. 2ª ed. Rio de Janeiro: Pirilampo; 2015. p. 94.
9. Habermas J. A ética da discussão e a questão da verdade. São Paulo: Martins Fontes; 2004. p. 10.
10. Piaget J. O juízo moral na criança. São Paulo: Summus; 1994. p. 156.
11. Piaget J. Op. cit. p. 157.
12. Habermas J. Op. cit. p. 65-6.
13. Tugendhat E. Lições sobre ética. Petrópolis: Vozes; 2012. p. 171.
14. Rawls J. Uma teoria da justiça. São Paulo: Martins Fontes; 1997. p. 499.

#### Participation of the authors

Pablo Dias Fortes wrote the first draft of this article as an activity in the Programa de Pós-Graduação em Bioética (Graduate Program in Bioethics). Later, both authors took turns in reviewing the text until they reached the present version.





## Anex

### Filme analisado

Mar Adentro (The Sea Inside). Director: Alejandro Amenábar. Release date: 2004. Country: Espanha. Language: Spanish. Running time: 155 min.

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