

## ***Some Remarks on Moral Rules***

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### **ABSTRACT**

In this article I discuss some aspects of *prima facie* statements and compare them with some deductive properties of moral rules. The conclusion I draw is in the sense of a re-evaluation of some aspects of moral intuitionism, which seems essential to the concepts of moral imagination and moral education.

### **KEYWORDS**

Intuitionism, moral imagination, moral education

1. Usually, the moral principle “lying is *prima facie* wrong” is interpreted as a conditional statement, that is a statement which is true in the absence of further specifications.<sup>1</sup> Davidson has, however, proposed to interpret some statements, like those expressing moral principles, in a different way.<sup>2</sup> In fact, while the first interpretation is commonly used in moral philosophy, in logical grammars the notion of *prima facie* does not apply to singular statements, but to couple of sentences. But as Davidson, together with Aristotle,<sup>3</sup> stresses, the conclusion of a practical syllogism is not a sentence,

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<sup>1</sup> The notion of *prima facie* duties (duties of fidelity, reparation, justice and fairness, gratitude, beneficence, self-improvement, non-maleficence) in ethics which here I take into account is that systematically set out by W. D. Ross, *The Right and the Good*, edited with an introduction, by Philip Stratton-Lake, New York: Oxford University Press, 2002 (1930, original edition), but I will not focus on his meta-ethical context or on his anti-naturalism. On intuitionism see the excellent collection edited by P. Stratton-Lake (ed.), *Ethical Intuitionism. Re-evaluations*, Oxford University Press, Oxford, 2002. Ross, in this collection, P. Stratton-Lake, *Pleasure and Reflection in Ross's Intuitionism*, p. 113-136.

<sup>2</sup> D. Davidson, *Essays on Actions and Events*, Oxford University Press, New York, 1980, Essay 6, *The Logical Form of Action Sentences*.

<sup>3</sup> Aristotele, *Nicomachean Ethics*, 1147a-sgg.

but an action. So, the statement above should more correctly be translated into something like this: “if an act is *prima facie* a lie, this very fact makes it wrong.”

This simple and seemingly trivial example reminds us that ethical reflection is always intended to be expressed as a kind of introduction to an action. This reminder is appropriate when we talk about rules, where there is the risk of overestimating the aids of formalization. This overestimation may inadvertently produce bad results that do not take into account what is a kind of primitive data, namely, that of our experience of people who meet other people is an action that takes place inside a reflection. The problematic character of moral action and ethical reflection is marked by the fact that these are performed inside the fragmentation of ethics, the pluralism of values, the so-called moral polytheism.

These primitive data come along with another feature, potentially in tension with the first ones. It is this: while it is true that ethical reflection is at the service of the action and that our moral experience is frequently fragmented,<sup>4</sup> it is equally undeniable that we continually make use of moral rules in our thoughts, and in our actions, both in a posteriori justification of our past actions and of past actions of other agents. These rules sometimes seem to be significant enough to enter in the formulation of legislative devices.

As a matter of fact we can see a general emphasis on rules almost every day in newspaper and magazines. One reason is to be found in the new and not previously experienced importance of the life sciences, that can be potentially relevant in the individual life of every person. This brings about a kind of general need for shared rules. A general emphasis of the rules is, however, at the same time, also a phenomenon akin to that of hypercodification,<sup>5</sup> which affects all the liberal-democracies. In the middle of the ideology of deregulation and globalization, the ancient dream of the liberal state as just the night watchman of our rights, seems to have gone down, stunned or killed by the avalanche of legislative or quasi-legislative acts of national and super-national parliaments and bureaucracies.<sup>6</sup>

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<sup>4</sup> On the origin of this fragmentation, see the classical analysis of Max Weber, *The Protestant Ethic and the Spirit of Capitalism: and Other Writings*, Penguin, New York, 2002.

<sup>5</sup> P. Prodi, *Storia della giustizia*, Il Mulino, Bologna, 2000; P. Marrone, *Un'introduzione alle teorie della giustizia*, Mimesis, Milano, 2003.

<sup>6</sup> E. Todd, *L'illusion économique*, Gallimard, Paris, 2003.

It is not, however, essential to feel nostalgia for that dream or be unsettled by the contemporary phenomenon of hypercodification to return to question the function of moral rules. This is what I will do in the following pages, which are so much a review of some issues that the function of moral rules, in my opinion, raises in our lives and, sometimes, an attempt to provide occasional perspective suggestion to ethical research.

However, something has survived of that function. What has been left to us like an ambiguous heritage is a call for coherence between different moral norms that can guide us, not without, sometimes, the perception that there may be chances for conflicts between different practical domains. The split between ethics and politics is one example. A similar problem of coherence is reported by the idea of 'moral luck' (your bad star has affected your life. Should this very fact guarantee a right for compensation? Does this call for compensation conflict with the idea of individual responsibility?)<sup>7</sup> and by the idea of 'natural endowments' (since your genetic heritage is not your responsibility, why should you be hold responsible for its consequences?). Consistency and coherence between different claims is often what is required to ethical reflection.

Clearly, none of these difficulties is, however, a good reason to set aside hastily moral rules, general precepts, universal norms, because what is expressed in general rules is the existence of a relationship between certain properties and an event, relationship can be expressed in this way: "for all x, if there is y, then z", where it is supposed that there is at least one property which is relevant to the universality or generality of the practical scenario.<sup>8</sup>

The main feature, although certainly not the only one, of moral rules is to be asserted in a plurality of cases - in the ideal case, this plurality asymptotically tends towards the universality -; from this feature a first important conclusion can be drawn, i.e. the independence of the purpose, or non-instrumentality of the rules. This feature may seem counter-intuitive.

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<sup>7</sup> On these problems see B. Williams, *Moral Luck*, Cambridge University Press, Cambridge, 1981.

<sup>8</sup> It is necessary to distinguish between universal generalization and statistical generalization. The first is an inductive generalization that applies to all the cases, the second applies to the majority of cases of a sample. On this problem that has to do with the validity of ceteris paribus norms, see the recent issue of *Erkenntnis*, vol. 57, 3 (2002), in particolare G. Schurz, "Ceteris Paribus Laws: Classification and Deconstruction", pp. 351-372.

The moral rules must still serve some purpose, otherwise why should we bother even to state them? Of course, all this is true, but the counter-intuitive result is only apparent and become clear when we introduce the distinction between ‘incorporating a purpose in principle’ and ‘modeling a principle by a purpose’.

When we act instrumentally, for example, maximizing our expected utility, according to some gradient of this utility, we act modeling a principle by a purpose. When we act in accordance with the principle prohibiting murder, we embed a purpose in our positive or omissive actions. This aim is also included in the exceptions to the rule, such as one that allows self-defense. The rules have the potential, therefore, to be incorporated quite precisely on the background of specific cases, which represent the specific representation of the applicability of the standard.<sup>9</sup>

From these remarks I think that we should conclude that many problems of the so-called ‘meta-ethics’ are part of a different chapter than the generality or universality of moral norms. Issues related to the appropriate epistemological instruments that could possibly certify something about their metaphysical nature are independent of and subsequent to any attribution of universality or generality. From the logical form of a moral sentence it cannot be analytically deduced nothing about its objectivist, realistic, expressivistic, non-objectivist, non-realistic ontology. The only logical form is also totally inadequate to provide information and motivation on why the moral statement seems particularly persuasive, in agreement with our intuitions, with our prior knowledge, our experiences, or in agreement with other accepted moral statements (the statement ‘you should not devastate the environment’ seems to have all these features, for example). But the logical form does not even seem to inform us if a statement is an example of a universal generalization and accordingly without exception, or is, instead, a statistical generalization, that is, a statement which validity is asserted *prima facie*. The description of the logical form of a moral statement is not a good instrument to understand the scope of applicability of some moral standard.

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<sup>9</sup> See P. Marrone, “Ragioni per l'azione, norme e contesto della scelta: riflessioni sull'utilità attesa e sul consequenzialismo”, *Teoria*, 2005, 1, pp. 93-116.

2. It is of course true that a *prima facie* moral statement requires examples that bring out the relevance of the case in relation to the rule, by which we can infer the relevant moral property of the action to be taken or omitted. What, however, is likely to remain concealed from this consideration is that if the exemplification discloses elements of the presence or absence of some moral property for the case in question, this happens because the reference of the moral statement is to the generality of a rule. The instantiation creates, in other words, a realistic presumption for the agent to believe that the relevant moral property is present or absent.

It should be noted that this does not mean that we have a criterion to distinguish precisely between a good action (motivated, that is, by a good intention) and the goodness of an action. This distinction is particularly important to show how ethical reflection is nurtured by both abstraction (norms, rules, universal and statistical generalizations) and necessary empirical investigations. Let us clarify this point with an example. If I am a philanthropist who launched an aid program for poor families of farmers in Mali (admittedly one of the poorest countries on the planet), which includes food and medical aids, who would deny that I am actually doing a good deed? But if I can get a basic idea of the causes of poverty of farmers in Mali (which are mainly cotton producers), which is commonly believed to be brought about by subsidized agricultures of the richest countries in the world (notably, the United States and the European Union), preventing the development of the poorest areas in sub-Saharan Africa, then, while this more complete knowledge does not affect the moral quality of my action, I should begin to have doubts about the actual goodness of this specific action in the medium and long time.<sup>10</sup>

On the one hand, it is easy to identify the fundamental moral quality guiding my action - trying to ease the burden of unwarranted human suffering -; from another, it is necessary an empirical recognition for making my intention as deep and good as possible. Resting on an exclusively epistemo-

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<sup>10</sup> The issue of charity is currently very complicated due to the emergence of an extensive marketing of goodness, which sometime reflects the holistic ideology of the competitive market. See the examples in J. Bakan, *The Corporation: the pathological pursuit of profit and power*, Free Press, New York, 2004.

logical reading of the *prima facie* statement clearly does not capture what the ethical statement is aimed at.

It is true that the relevant moral properties that are believed to be incorporated into a good action make right our good intention (if I am a person who keeps his promises, the quality of the actions arising from my keeping promises is confirmed and increased, not decreased by my keeping promises), but this until it collides with considerations of greater weight, which, usually, are structured in a complex empirical dimension. This is basically the reason why morality (both moral inquiry and moral action) is both a product of idealization and of empirical recognition. If a moral norm cannot be instantiated into an example, then it is doubtful that it has a real value for us.

For this reason, I think it is correct to say that a moral norm can play a twofold role. One role is epistemic and investigative and it is about the critical awareness that the agent may have reached about the depth of a standard, that is, its applicability to a variety of non-trivially similar cases, and about its complexity, i.e. its capability to relate to other standards in a rational and hierarchical structure. This is definitely one of the main tools for an agent to evaluate alternative options even when - or maybe especially when - they are not clearly opposite. An awareness for the function of the standards can be useful as a counterweight to a certain, so to speak, frigidity of the rules, i.e. the fact that griping too close to the rules debar a second role, that is the ability to modulate moral sentence within the power of our moral imagination. Moral imagination is the ability which protects us from the moral severity, bringing us back to our of human frailty. Imagination (the ability to imagine ourselves in hypothetical situations) has a clear link with the complexity of the moral life and it is not a coincidence that this function has been most successfully described mainly by artists rather than by philosophers and legislators.<sup>11</sup>

3. It is not, however, on this last important role that I mean to focus, but rather on one thing, which I will call ‘truthfulness’, played by moral norms, i.e. the capability to highlight the truth of some moral conclusions. There are various models which are compatible with this idea. One of these could

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<sup>11</sup> On the role of imagination in moral education see M. Nussbaum *Poetic Justice*, New York, Houghton Mifflin, 1996.

be a deductive model that requires that every singular statement of an ethical system is produced by the conjunction of a general moral norm with a description of a proper case. The purpose of the general norm is to highlight a fundamental property related to the moral dimension; the purpose of the proper case is to show that this property is present in the action that is taken into consideration.

Another model, the intuitionist model of D. Ross, based on the role of *prima facie* statements, tells us a different story. According to Ross, singular judgments cannot always be deduced from the conjunction of a moral standard and a specific case, since they may not always receive their deontic character from this conjunction. However, the morality of an action depends solely on the fact that it incorporates some fundamental property that is part of a *prima facie* valid norm.<sup>12</sup> These properties, unequivocally, create a certain emotional tone, which helps to form the presumption of their validity, but may be overshadowed and overwhelmed by different constellations of fundamental properties.

Does this kind of intuitionism justify skepticism about the rules? Often, I have heard the following example from advocates of the various forms of skepticism about the rules (with the obvious intention of *épater les philosophes*). Consider the valid *prima facie* statement “it is immoral to kill babies.” We know that civilizations different from ours seemed to contradict the *prima facie* validity of this statement. How a skeptic would argue about this example? Probably, saying that different constellations of property were relevant for different agents.

I do not think, however, that this is the last word that can be offered in this regard. In fact, one can argue that it is not the *prima facie* validity of the statement to be questioned, but rather the conditions of identification to apply it to the fundamental properties of the relevant cases. It seems to be quite clear that in some culture some physical deformations excluded some infants from the category of ‘normal infants’ (infants, that is, that presumably could develop into ‘normal human beings’). It is not, therefore, the *prima facie* validity of the statement to be challenged, but rather the

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<sup>12</sup> Co W. D. Ross, *The Right and the Good*, “I suggest ‘prima facie duty’ or ‘conditional duty’ as a brief way of referring to the characteristic (quite distinct from that of being a duty proper) which an act has, in virtue of being of a certain kind (e.g. the keeping of a promise), of being an act which would be a duty proper if it were not at the same time of another kind which is morally significant.” (p. 19).

normativity of the concept of ‘normal infant’ and of the concept of ‘belonging to the human species’. We think with many good reasons, both scientific and moral ones, that we have a more complete concept of ‘human being’ such that we must reject those practices. In rejecting them, we do not do nothing but reaffirming the validity of the *prima facie* statement, assuming that it has never really been rejected by anyone in a well-founded way.<sup>13</sup> This exemplification is not a general refutation of skepticism about the rules, but it shows its inadequacy in a relevant particular case.

For the intuitionist it remains true that, regardless of the constellations of moral meanings that come into play in our judgments, *prima facie* judgments fulfill an important function in identifying relevant features from the moral point of view. These characteristics are important because they can be subsumed under a rule that identifies the property and/or moral principles to which those characteristics are reported. The difference with the first model is that in the second this subsumption is intrinsically problematic and contingent. The important thing in my opinion is that it is not essential to be an intuitionists to think that *prima facie* judgments may actually be an important instrument to identify the validity of a particular moral statement.

Therefore, it would be wrong to identify the second model with a theory that, in the end, does nothing but warn that the likely outcome of the supposed validity of *prima facie* statements is a recurrent relativism, which drowns them in the vortex of increasingly specific constellations of different and potentially incompatible moral meanings, how the skeptic states. In fact, such sentences have a range of applicability (*prima facie*, indeed) very large, because, in extreme cases, they can be applied in all ethically relevant cases, identifying a property as essential. This idea is emphatically incorporated in the generality of the standard.

As a matter of fact, there may be features of the world that can become ethically relevant in certain socio-economic contexts, without being in any way covered by *prima facie* sentences, even when, for various reasons, we are led to believe that the statements, that they express, are instead *prima facie*. For example, the statement “it is morally correct to pursue good governance” is ethically insignificant. While its being insignificant may be a good reason for being continually repeated by politicians, it is not, however, a reason for a specific moral thickness. Assessing it without many further

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<sup>13</sup> J. Bennett, “The necessity of Moral Judgment”, *Ethics*, 1993, 103, pp. 458-472.

specifications does not help us at all in choosing whether it should be ethically preferred a policy of expansion of public spending or cuts in government services or whether it is ethically justified the intrusion of international organizations in the political economics of a nation. Any hope of understanding such complex issues requires an extensive discussion both of ideas and empirical analysis that the general sentence can neither give nor suggest.

This also applies to other statements that are not *prima facie* but that have acquired an axiomatic value in certain contexts. Moreover, some of these actually identify basic moral properties. I am thinking about some statements that for us, citizens of the affluent society have this axiomatic quality, such as: ‘democracy is the best system that promotes justice: it is therefore an ethical duty to promote it’, or ‘political democracy is the system that best promotes personal freedom: it is therefore an ethical duty to promote it.’ With regard to the first, it can be said that there is no analytical link between democracy and justice, but just a synthetic bond, subject to all the contingencies of the empirical linkages. With regard to the latter, it suffices to say that in plebiscitary democracy, such as many of the Western liberal-democratic political systems, the formal structure of political participation is overwhelmed by the immense amount of money needed to support the political machines of the candidates. I believe there is not anyone so naive as to think that bringing into play of immense resources has the purpose to foster the personal freedom of individuals. Even what we accept as axioms of our civil life, axioms that should, in some way, epitomize the ethical depth of our political systems are quite empty.<sup>14</sup> If they identify some fundamental properties (‘personal freedom’, ‘person’) this is done in conjunction with empirical cases, while it is not clear at all that the rule can show us the way in which this should be done. It goes without saying that these last two examples may apply only if you have been already persuaded that the distinction between morals (which would deal with private cases) and ethics (which would deal with public behaviors) cannot exhibit but weak reasons to be justified.

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<sup>14</sup> That the link between the rise of personal freedom, the concept of personal dignity and an endowment of rights is just formal, is the position held by the young Marx. Sivek K. Marx, *The Economic and Philosophic Manuscripts of 1844*, Prometheus Books, 1988 (*Oeconomisch-philosophische Manuskripte aus dem Jahre 1844 in Marx-Engels Gesamtausgabe*, vol. III, Frankfurt a. M. – Moskau, 1932).

4. But how the identification of relevant moral rules could set out correct procedures for the identification of specific moral cases? Emphasizing how to derive particular statements by general rules, do deductive models have less difficulties than the intuitionist approaches based on *prima facie* statements? In a sense, the answer is positive, because the need to bring together the particular statements with the general rules does not lead to consider the discovery of constellations of meanings that may cast doubt on the identification of general rule or fundamental properties a final result which can be reached, but a problematic and momentary outcome which calls into question our best knowledge of our best available empirical and theoretical models.

It is true that rely too heavily on the virtues of the practical syllogism can lead to a conservative intellectual attitude. This attitude can hinder the identification of new morally relevant cases or particularly complex cases, or even cases of moral dilemma. The individuation of a chain of argument (which traditionally identifies ethical argumentation with practical syllogism) does not provide greater certainty of existence of a moral property, but rather certifies a commitment towards moral discussion and truth. While the outline of a comprehensive moral order, is, however, out of place for an ethical thinking that feeds on experience, this is not a good reason to give up the search for an intellectual order.

On the contrary, it is quite true that a model based on *prima facie* statements incurs more easily in a drawback of this kind because, while it identifies basic moral properties with greater ease, it does not provide specific tools to relate our moral intuitions to the special cases. If we are lucky, this can happen, but the idea that the *prima facie* sentence is not the major premise of a syllogism leads inevitably to think that each conclusion could be thorough enough to be put in disagreement with the *prima facie* statement.

This does not mean, however, that *prima facie* statements does not often play an important role in everyday life. Reporting a shared heritage, in fact, is a cognitive practice at least as important as ethically reasoning. *Prima facie* statements are aimed at to this shared ethical assets. The advantages, from my point of view, are of two kinds: assuming some *prima facie* statement usually shortens discussion, and we do not always have sufficient time to discuss; besides, through shared ethical beliefs the noise, so to

speak, in the communication channel is greatly reduced. The risks are not necessarily minor and should not be underestimated, because the disadvantage of this model is the possibility of conformism and fanaticism. For this reasons, a *prima facie* statement is rarely conclusive in an ethical discussion.

The two models that have been outlined, however different and competing, share an important theoretical core, namely the idea that it is possible to identify morally relevant elements from non-moral characteristics. We, in fact, do not blame a praying mantis eating the head of the male during copulation. Instead we blame the jealous wife who emasculates her husband. It is the attribution of certain characteristics, relevant from a moral point of view (intentionality, responsibility, intelligence, and so on) that allows the ascription of moral characteristics to a human actions and not to mutilation performed by a praying mantis.

This position seems to be plausible for both models, but there are some who claims that, on the contrary, no rule is able to identify morally relevant features in action by no moral features. The conclusion is that there are no rules that identify ethically relevant properties, because the empirical circumstances of every action prevent us from identifying fundamental not moral properties.<sup>15</sup>

Let us consider the prescription of abstaining from getting directly or indirectly pain to someone. Since we can easily imagine situations that violate this *prima facie* rule, then the rule has no value and no significance, since it does not allow discrimination between relevant and not relevant cases. The oncologist should refrain from prescribing immunosuppressive therapies, which often cause pain to the patient, and limit to the administration of the most potent available analgesics; the police should limit its action to a benevolent reproach, instead of removing points from your drive license for dangerous driving; the legal systems should not provide punishment. The conclusion is that the rules are not *prima facie* rules because they do not allow us to identify anything. And since the operation of identifica-

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<sup>15</sup> On particularism see J. Dancy, "On Moral Properties", *Mind*, 1981, pp. 367-385; J. Dancy, "Ethical Particularism", *Mind*, 1983, pp. 530-547; J. Dancy, *Moral Reasons*, Blackwell, Oxford, 1992; S. Kirchin, "Particularism, Generalism and the Counting Argument", *European Journal of Philosophy*, 2003, pp. 54-71; J. Dancy, "Contro le ragioni basate sui desideri", *Ragion pratica*, 2003, pp. 189-208 e B. Celano, "In difesa delle ragioni basate sui desideri", *Ragion pratica*, 2003, pp. 209-232.

tion and re-identification is what allows the cognitive strategy of showing fundamental properties, then these properties do not exist.

5. This strategy, which emphasizes the indefinite variety of moral cases and, ultimately, the fragmentation of our ethical life, however, relies on something truly present in our experience, which actually takes place and becomes operational through a particular context. However, this fact, taken by itself, does not prove the conclusion that the skeptics is talking about, that our experience is *only* a singular experience. An analogy with perception can help here: even our perceptual experiences, by the very fact of being experiences, are contextual, but our perceptual experience is singularly compact and filled with invariance that, usually, make our present experience a good instrument to give credit to for our future experiences.<sup>16</sup> The singularity of the elements of the experience does not mean fragmentation and loss of the unity of experience.

Let us consider the case of lying. The ethically negative value of lying depends on the positive value we attach to the truth. Truth, according to common sense, allows us to see things as they are; we can assess the reliability of other people evaluating their leaning to tell the truth; we can evaluate our willingness to cooperate with others on this leaning. But it happen that we lie and we do not always experience lying as clearly immoral behavior. The mother tells the child that his recently died father has gone on a long journey: certainly she is not telling the truth. Or let us think about someone who defends his homeland from an invader, and captured by the enemy, lies on the identity of his companions. All these behaviors are not truthful, but how they question the morality of the *prima facie* rule “you must tell the truth (or at least what we consider to be such)?” The rule remains true in a presumptive way (*prima facie*, indeed) and counterexamples do not show at all that there is nothing ethically significant in telling the truth, but rather show that there are cases where the importance of telling the truth can be placed in the background, without acting immorally.

By its very nature the position that insists on the structural particularity of our moral experience cannot tell us how to select the cases in which

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<sup>16</sup> R. Nozick, *Invariances*, Harvard University Press, Cambridge, (Mass.), 2003; M. Ferraris, *Mondo esterno*, Bompiani, Milano, 2001.

truth-telling can be overshadowed. Take, switching to another example, a behavior exhibiting solidarity. It is certainly good to show solidarity, but to whom? I can be sympathetic to the members of my mafia gang or to a friend who usually performs pedophilia. These are certainly not morally praiseworthy behaviors. It must be concluded, therefore, that solidarity is highly contextual and that therefore there is no *prima facie* obligation to solidarity? I think that these examples miss the point. What they show is not so much the absence of a *prima facie* rule that requires the attitude of solidarity, but rather the absence of any clause of specification in the general statement as it has been formulated. Moreover, these examples are in no way in conflict with the fact that intuition can actually be one of the criteria to guide the decision. They just prove that in most cases the intuition cannot be the only criterion.

These examples are by no means conclusive, because there is still something we need to understand. Do they refer to moral properties which value is variable or to certain fundamental properties which value is always the same, but that have been overwhelmed by other properties morally most significant? In other words, can we be sure that some form of solidarity with a friend who is guilty of immoral behavior cannot have anything good in itself? The possibilities of analysis are more than one, for example: a) it could be argued that solidarity is a good thing only if it leads to good consequences and if it is part of a general set of good plans, or, b) it could be said that solidarity does not always lead to good consequences. In the latter case, what should be said is that a property is inherently relevant from the moral point of view only if all its applications are relevant in the same way. Since it is not so for the solidarity, then the conclusion should be that it is not a property inherently relevant and significant.

What makes relevant a morally significant quality? I believe it is not only the fact that the moral value of the action in which it exhibit itself immediately results from its incarnation into action. The properties of the action are subject to different and gradual evaluation and the same applies to morally relevant qualities, but many people think that a positive moral evaluation of an action, which incorporates values such as solidarity, generosity, telling-the-truth, is self-evident. If we agree with this assumption, it does not follow that we should deny that these values are subject to exceptions of a certain context, as it does not follow that since the exceptions stemming from the context actually exist, then those values are not morally relevant properties. In other words, exceptions to the moral rules do not

mean that the behavior we assume as morally relevant is meaningless: enjoying the undeserved misfortune of a fellow creature is always morally wrong; killing for fun, too. Why? Because we believe that these actions are void of morally significant justifications. This can be said without engaging in strictly deontic considerations. Those who deny the existence of any moral rule, of course, deny the existence of any similar feature in the evaluation of similar actions.

However, we must admit that affirming the existence of rules is one thing and saying that these rules are able to identify and define precisely sets of morally relevant elements in similar cases is another. Defining a set of morally relevant elements is a task close to that of creating borders. These boundaries in ethics are moral rules that identify ethically relevant characteristics, and properties are morally relevant if they can be shown in a particular case. The falsification of the idea of rules as creators of borders is not a simple task. It is not enough to be able to point out a single case in which the moral relevance of the property in question is uncertain and/or subject to exceptions.

6. Our moral environment is, in fact, inherently complex, adaptive to our needs, and involve the use of tools of reasoning with degrees of flexibility and sensitivity to the context of the choices: these are all elements that make a project of ethics limited to particular cases highly implausible and, in fact, even those who are suspicious of an ethics tightly bound to general *prima facie* statements, think that an excessive specification - proper names, indexicals, definite descriptions - cannot distinguish their position from moral particularism.

A moral strategy that is sensitive to the context of application is therefore not really a strategy that calls into question the general ethics, because, while we can assume that the relevant moral properties are sensitive to the context and at the same time are relevant in a diversified manner, we can also continue to maintain that special cases are meaningful only if they can be traced back to relevant properties. For example, the wickedness of a murderer is explained by its relationship with the evil of murder in general. If we assume that the judgment on the particular evil of a particular murder is due solely to some other character, different from the intrinsic evil of murder, then we should abandon the possibility of an explanation through moral principles (this would be possible, for example, if we would subscribe

a strict behavioral determinism, which makes impossible the very idea of moral action).

It is of course true that situations and people are in some ways unique. This condition is expressed by the possibility of giving definite descriptions. You could also say that this is precisely what happens when we begin to recognize that the context should help to determine our moral sensibilities. However, the idea of moral particularist of a *sui generis* ethical relevance of the context is, at present, somewhat mysterious and might not have any explanatory power. Of course, the particularist can object that the particular context of the action is a kind of brute fact, and that those who conceive of the moral rules such as what surround the validity of our judgments and rely on this picture to falsify particularism simply assume the thesis to be proved.

Particularism violates the principle of economy that is characteristic of every good theory or model. The problem is that it is not enough to advance this last observation to settle the issue. If it is quite reasonable to contemplate exceptions to moral rules, how many of these exceptions can be tolerated in order to preserve the superiority of the explaining theory over particularism? Is it conceivable that these exceptions can also be a significant number. But how many exactly should be without being too many? We are not in possession of a method that will show us an ideal number of exceptions. The only plausible rule is this: that the map should look like the land, but cannot picture the territory in all its details, otherwise it would identify with this. It is intuitive that if an explanation takes us back to the problem of the limited exceptions, however a certain explanatory vagueness does not render the particularistic position stronger, because this would be true if no moral fact (together with its context) could never be considered as an example of a general rule, a position that is in fact false.

The idea of general moral rules as a means of delimitation seems to me particularly valuable both from the point of view of its use in common sense and from the point of view of moral epistemology. But how general rules are able to specify particular conclusions? The situation is not clear. When are identified by a single *prima facie* rule, morally relevant properties do not arise considerable problems; but what happens when there are different *prima facie* rules at stake? Must we conclude that *prima facie* rules are not able of determining specific moral conclusions? If we give a positive response, we accept the underlying idea that the relevance of the *prima fa-*

*cie* rules may vary so deeply, depending on the actual circumstances, that they are no longer rules. Or, since we are not able to know in advance what is the relative weight of each of the *prima facie* rules in competition, we must be willing to go beyond to some higher rule, for example some absolute moral rule. Or, again, we can maintain that *prima facie* rules can determine specific moral conclusions, without any need for absolute rules or additional insights, but then we must also be willing to put our *prima facie* rules in a lexicographical order.

Some solutions could come from a order in which to every rule is assigned a different numerical value. Thus a rule with a lower numerical value could, in certain circumstances, exceed the value of a rule with a higher value, because it would be in conjunction with other rules and their total value would be superior. This method reduces the uncertainty in the conclusions, and it seems to approximate to how we take decisions in some actual circumstances in real life, for example in situations which seem to involve ethical dilemmas. The problem is that we are not in possession of a method to decide what the numerical values could represent. Degrees of satisfaction, perhaps? A ordering of *prima facie* rules by another criterion? Why should we suppose that this ordering is fixed? Should we consider ourselves bound to the numerical value of a *prima facie* rule prescribing to tell the truth more than to a *prima facie* rule prescribing some kind of solidarity? The idea of a numeric representation of fixed *prima facie* rules appears to be very unlikely, although it is true that when rules are in conflict with each other we try to assess their relative weight. But this brings us back to the first objection, namely that a system of *prima facie* rules seem to be just a step in moral deliberation.

7. An alternative solution to this situation of uncertainty is represented by various monistic systems. For these systems the general condition is that exists a fundamental value which must be maximized. This value can be love for God or avoiding pain or achieving pleasure or promoting the interests of the nation, or preserving the rights of individuals. To embrace a monism of this kind is necessary to be convinced that any value is derivable from a single source, through various intermediate steps. But this seems to be false. The value of friendship seems that cannot be stemmed from the same source of the value of knowledge. The value of solidarity, meant as re-

spect for the humanity of a person, cannot be stemmed from the value that is attributed to our own professional association.

Suppose, for example, that the supreme value from which the others can be stemmed from is pleasure. Certainly, knowledge can usually provide to the person who know a kind of pleasure, but how can we be sure that the result of every cognitive act will be directly derived from that supreme value? After all, we can also get to hear unpleasant things (this is one of the consequences of the motto *sapere aude*). Scientists work keeping in mind the possible confirmation of their hypothesis, but they can come across with facts which falsify their expectations. It is hard to believe that the process of falsification generates pleasure. Something similar can occur in everyday life. For example, you may have based the relationship with your partner on the sincerity and openness. Nonetheless, one day you discover that your partner has been involved for years in a parallel affair with that neighbor you hate. Clearly, this cognitive revelation will not make you happy. The moral monism does not recognize, therefore, that there are values that are irreducible and does not provide a method for selecting preferences in accordance with the supreme value.

Perhaps a constructivist approach could prove more flexible in order to defend some kind of ethics of rights,<sup>17</sup> which are probably the most promising candidate from this point of view, because it allow to articulate many ethical behavior, while maintaining the unavailability of the ethical first principles. Even though for this system too remains valid Nozick's

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<sup>17</sup> The main sources of the debate on constructivism are two: N. Goodman, *Facts, Fictions, and Forecasts*, Harvard University Press, Cambridge, (Mass.), 1983, and J. Rawls, *Political Liberalism*, Columbia University Press, New York, 1993, pp. 89-129. On constructivism see also, O. Hill & E. Thomas, "Hypothetical Consent in Kantian Constructivism", *Social Philosophy and Policy*, 2001, pp. 300-329; R. Wedgwood, "Practical Reasoning As Figuring Out What Is Best: Against Constructivism", *Topoi*, 2002, pp. 139-152; E. Watkins & W. Fitzpatrick, "O'Neill and Korsgaard on the Construction of Normativity", *Journal of Value Inquiry*, 2003, pp. 349-367; P. Stemmer, "Moralische Rechte als soziale Artefakte", *Deutsche Zeitschrift für Philosophie*, 2002, pp. 673-691; T. Magri, "Freres Ennemis. The Common Root of Expressivism and Constructivism", *Topoi*, 2002, pp.153-164; C. Lafont, "Realismus und Konstruktivismus in der kantianischen Moralphilosophie: das Beispiel der Diskursethik", *Deutsche Zeitschrift für Philosophie*, 2002, pp. 39-52; O. O'Neil, "Constructivism in Rawls and Kant" in S. Freeman (ed.), *The Cambridge Companion to Rawls*, Cambridge University Press, Cambridge, 2003, pp. 347-367.

objecton,<sup>18</sup> that is, what to do when a “catastrophic moral horror” can be avoided only with a violation of the basic principles of the ethical system?<sup>19</sup>

Many provisions are likely to be deficient from the point of view of information, reproducing at a different level the same defect which were intended to prevent. We can certainly try to specify them further, but this may just be one more problem for an ethics of rights. I.e., you are a cop sincerely convinced of the sanctity of rights. You and your mates have captured a man suspected to concoct a terroristic attack. You have a reasonable suspicion that the plan for the attack is in an advanced stage of implementation. You have the prospect of saving lives, if you are able to get the right information in a short time, but the suspect does not speak and say he knows nothing on a possible attack. How much are you willing to push forward with the interrogation techniques? Are you willing to give a couple of slaps to the suspect? And if these do not work? Are you willing to break his arm? Or to amputate it? You decide to practice a moderate level of physical persuasion, involving beatings, but no permanent physical damage. Eventually the suspect results unrelated to the preparation of the attack, which, in the meantime, has been performed and did not cause any victim, but only property damage.

Were you justified in torturing the suspect? The attack could have brought about much more damage killing many lives. Moreover, you were in good faith and really thought that the suspect was involved in the preparation of the attack and was able to provide useful information for preventing it. How precise must be any information in such cases to proceed to an interrogation that violates the rights of the suspect? How serious must be the possible attack? How precise must be your notion of moral catastrophe

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<sup>18</sup> R. Nozick, *Anarchy, State, and Utopia*, Basic Book, New York, 1974, p. 30; for issues related see also: T. Nagel, “War and Massacre”, *Philosophy and Public Affairs*, 1972, pp. 123-144; R. Brandt, “Utilitarianism and the Rules of War”, *Philosophy and Public Affairs*, 1972, pp. 145-165, M. Walzer, *Just and Unjust War*, Basic Book, New York, 1977.

<sup>19</sup> It is a issue akin of that of deterrence. T. Schelling, *The Strategy of Conflict*, Harvard University Press, Cambridge (Mass.), 1980<sup>2</sup>; G. Kavka, *Moral Paradoxes of Nuclear Deterrence*, Cambridge University Press, New York, 1987; R. Festa, “Minacce e promesse: logica e metodologia della deterrenza”, in G. Mangnaro Favaretto (ed.), *La guerra: una riflessione interdisciplinare*, Edizioni Università di Trieste, Trieste, 2003, pp. 247-298 e R. Festa, “Teoria dei giochi e strategie della deterrenza”, *Logic & Philosophy of Science*, 2004,

[http://www.univ.trieste.it/episteme/L&PS\\_Vol2No1/contents\\_L&PS\\_Vol2No1.htm](http://www.univ.trieste.it/episteme/L&PS_Vol2No1/contents_L&PS_Vol2No1.htm).

to venture further on the dark side of the violation of the person? It is clear that in such a situation, unless you and your colleagues are sadistic cops, you experience a genuine dilemma.<sup>20</sup>

The problem which is highlighted by examples of this kind is that we are not in possession of all necessary rules to answer to these last three questions. Filling in a list with many cases does not solve the problem, because neither you have any guarantee that the list is exhaustive nor you can know a priori that it takes into consideration all relevant cases, although a list of cases helps to reduce the uncertainty.

Perhaps it is not necessary, however, to charge the ethical absolutism with the accusation of hypocrisy, when it can be shown that at least some of its behaviors can be driven by fanaticism. Where does this potential fanaticism stem from? You can trace it back from the belief that every moral conclusion and every action are determined by an absolute rule. This model, conceiving of moral properties as fully determinative of the contexts of action, is in fact incompatible with a *prima facie* model. If we were in possession of an exhaustive set of absolute moral rules there should not be more space for the *prima facie* rules, that we could not even consider as imperfect epistemic guides for action. As a matter of fact, moral properties are determinative of the contexts in a variable way. Usually aggressive actions against a fellow human being that are not performed for self-defense are sufficient index of cruel behavior, although, perhaps, not of an inherent cruelty of the agent. If a person donates the most part of his wealth to charity institutions, this is usually considered as an index of a generous attitude, but things can be explained otherwise. Causing the death of a child elicits a reaction of indignation, but if your child is suffering from an incurable form of cancer and you are to administer a large doses of morphine to ease his unbearable pain, knowing that the outcome will be a respiratory arrest, then things need to be considered from a different perspective - that for someone calls into play the doctrine of double effect. But this means that some properties, which you cannot actually deny as determinative of ethical judgments, are not always able to determine the moral conclusions we would like, because we are in the presence of an ethical salience that it is hardly deniable.

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<sup>20</sup> A. Dershowitz, *Why Terrorism Works: Understanding the Threat, Responding to the Challenge*, Yale University Press, New Haven, 2003.

Ethical monism is not able to sketch a comprehensive set of absolute rules, while it cannot refute the idea that there are salient ethical properties that are drawn by variable contexts.

The consequences that should be drawn from this phenomenology are important from the epistemological point of view and from the point of view of ontology of morals. Should we think that some practical conclusions are not deductible by rules? Would it follow a devastating epistemological skepticism on ethics? I think that it depends on how we justify the idea that we have access to moral facts that undermine ethical absolutism. Stating that our access to certain moral facts is not inferential, but that it is in accordance with some other beliefs, is in contrast with the characteristics that usually is attached to not inferential knowledge. Indeed, the validity of a justified belief that allows the conclusion of the practical syllogism is not an analytically true knowledge. Otherwise, thinking that justification is inductive does not give to ethical exceptions the place that must be given to them to describe more fully our ethical experience. The only other possible strategy seems to me to move towards a kind of coherentism.<sup>21</sup> The underlying idea is that it is not sufficient to establish the existence of some difficult cases or exceptions for collapsing the system of rules. So, while consistency remains one of the goals of the justification of rules, this happens without refusing the intuitive reliability of particular cases.

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<sup>21</sup> E. Baccarini, "Rational Consensus and Coherence Methods in Ethics", *Grazer Philosophische Studien*, 1991, pp. 151-159; S. Klein, "The Value of Endoxa in Ethical Argument", *History of Philosophy Quarterly*, 1992, pp.141-157; R. Ebertz, "Is Reflective Equilibrium a Coherentist Model?", *Canadian Journal of Philosophy*, 1993, pp. 193-214; E. Stein, "Rationality and Reflective Equilibrium", *Synthese*, 1994, pp. 137-172; K. Nielsen, "Methods of Ethics: Wide Reflective Equilibrium and a Kind of Consequentialism", *Journal of Social Philosophy*, 1994, pp. 57-72; N. Daniels, "Justice and Justification: Reflective Equilibrium in Theory and Practice", *Zeitschrift für philosophische Forschung*, 1998, pp. 332-336; N. Daniels, "Justice and Justification: Reflective Equilibrium in Theory and Practice", *Zeitschrift für philosophische Forschung*, 1998, pp. 332-336; B. Gaut, "Justifying Moral Pluralism" in P. Stratton-Lake (ed.), *Ethical Intuitionism: Re-evaluations*, pp. 137-160; R. Miller, "Without Intuitions", *Metaphilosophy*, 2000, pp. 231-250; T. Scanlon, "Rawls on Justification" in *The Cambridge Companion to Rawls*, S. Freeman, Samuel (ed), cit., pp. 139-167.

8. What coherentism suggest is the importance of sensibility for correcting our judgments. Indeed, there is also a fetishism of the rules as well as skepticism about rules - expressed by the paradox of Wittgenstein that any fact can be put in an agreement with a rule.<sup>22</sup> Using intuition does not mean that we abandon the possibility of justification, since the function of moral rules is not the development of moral sensitivity, but the support to our moral sensitivity once it has already formed. This sensitivity is probably incompatible with some forms of nominalism, i.e. positions that deny the existence of moral universal. This may lead us to re-evaluate a position as Ross's intuitionism that claimed the possibility of ethical universal, without having to rely on the constant possibility of deducing each moral fact by general or universal rules.

The belief that there are no rules which can cover the totality of our ethical experience can be questioned by at least two considerations: a) the first is simply that the ethical life is not necessarily meant to generate more certainty. Living ethically means, increasingly, also living within a kind of risk. The ethical risk is both the possibility of failure and the possibility of crossing the weakness of our own will - as well as that of others -, as well as the possibility of moral dilemma and the possibility to meet some deliberations of other people which do not agree with ours. The rules are an aid, but cannot be the solution to the risk of ethical life, as it cannot be intuition, which indefinite extension leads to fanaticism. We need to reconcile both the need of an order, expressed by the rules, and the moral phenomenology of concrete cases, and the ethical heritage expressed by our best intuitions; b) the second is the difficulty of indicating moral rules that can always be in agreement with our considered judgments and with moral facts. This suggest, therefore, that deductive models tell us only one side of the story of our deliberative ability in ethics (and, at most, a fragment of how our moral sensibilities is made, but this is a different problem).

Our deliberative ability is itself a fact that we cannot ignore. Throwing some new light on our ability could be possible questioning our old models, and trying to suggest new models, also to interpret some old questions. One of these, by way of example and suggestion, could be: how our values cross with each other? Since an adequate representation of our system of values

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<sup>22</sup> L. Wittgenstein, *Philosophische Untersuchungen*, Blackwell, Oxford, 1953, par. 202. See also R. Arrington, *A Wittgensteinian Approach to Ethical Intuitionism*, in P. Stratton-Lake (ed.), *Ethical Intuitionism. Re-evaluations*, cit., pp. 271-289.

tends to be holistic - otherwise there would not be the presumption of coherence - the underlying assumption is that each of our value is connected with other values, although it might not be directly connected to each other .

It may be possible to provide a representation of this provision by means of tools such as graph.<sup>23</sup> The graph is a schematic structure that connects points on space. It is a representation that has proven to be highly effective in complex phenomena such as ecological niches in food relations, air traffic, the distribution of wealth in national economies, the mapping of the internet, and so on. All of these are phenomena where individual events show varying degrees of connection with other events. There may be items that are highly related - codfish in the Benguela ecosystem in South Africa, the Atlanta airport in the system of world air traffic, the node on the internet that was under the Twin Towers before September 11 - in a complex network. Within a complex network some objects are somehow privileged, since they have more connections than others - codfishes more than whales and dolphins, the hub of Atlanta more than the airport of Ronchi, the node of the Twin Tower more than that at the University of Trieste -. Having more connections means being connected to a larger number of other nodes. For this reason going from any point to any other inside a network of a certain kind - the so-called ‘small world’ networks - takes only a few steps (the number varies from three to nineteen, and expresses the degree of separation of the nodes between them). For this reason going from one web page to any other inside world wide web does not take an indefinite period of time, but just a few clicks of mouse. The amount of connections that the nodes have with other nodes is important to try to understand when a network may collapse. This is a problem that we are about to understand partially just now, although there are many cases that currently seem too complex – i.e. the case of the food chain in ecological niches.<sup>24</sup> It would make sense to ask for ethical systems some of the questions we may ask for the air traffic system? Which nodes are more important than others? Which values develop more connections with other values?

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<sup>23</sup> A.-L. Barabási, *Linked. The New Science of Networks*, Plume, New York, 2003.

<sup>24</sup> The examples are from M. Buchanan, *Nexus, The Grounbreaking Science of Networks*, W. W. Norton & C., 2002. This text, like the one mentioned in the previous note, does not contain references to the possibility of describing our moral experience as a network (as that term is technically used by them). This is a surprising omission in texts sometimes perhaps too enthusiastic.

Thinking about our values as a network could throw new light on the problem of moral indeterminacy. The facts that appear to be more uncertain from the point of view of ethics would be those that are on the periphery of our moral map? Some of the phenomena that may be described as networks are highly structured and solid; in other words, it is not sufficient to bring about the collapse of nodes at random because the system tends to dissolve, since the nodes with the highest number of connections are those which can cause a plight. Does the same apply also within moral systems? Supposedly, in moral systems the peripheral nodes are those which are most exposed to superficial vulnerability, and those which are closer to the central ones are the nodes which can cause the collapse of the system. This topography could explain why moral dilemmas are not so frequent in everyday life, after all, but when they occur they are able to short-circuit our moral system.

How could a search of this kind be promising? It is obvious to say that there are conditions that favor the collapse of value systems. This collapse is much more likely to occur where the individual rather than the community is involved. This assumption is rather easy to accept. Imagine being in a foreign country that has been invaded by your country and that you are in charge of the interrogation of hundreds of prisoners, without having received adequate psychological training. This fact is a precondition of moral abuse, but if we add your lack of understanding of the language and local customs, then you will not be much surprised that your moral system can begin to collapse under an intolerable pressure (pressure that maybe you try to contain, hiding behind the formula of obedience to superior orders). If the individual had a clearer understanding of the values that constitute his main moral nodes and had been exercised to moral imagination, would he be able to resist to this pressure? We currently do not have clear and systematic answers to this and other questions involving the strength of our moral sensitivity to adverse conditions, but a representation of our moral world as governed by rules that constrain our considered judgments is inadequate, and suggests a reevaluation of moral intuitions for a better understanding of our moral experience.