

Morality and Its Limits

The Philosophy of Ruwen Ogien

By Marlène Jouan

Ruwen Ogien defended moral minimalism, arguing that what can be legitimately prohibited is the harm caused to others, and that, for the rest, individuals should be allowed to live their lives as they see fit. He considered that ethics has meaning only when it is limited.

“Who can do more can do less.” While the reception of Ruwen Ogien’s moral minimalism does not really confirm this adage, it does spark a crucial and exciting discussion regarding the conditions under which moral norms and values can serve an emancipatory political project.

The philosopher Ruwen Ogien left us on 4 May, 2017, after several years of fighting cancer and after writing *Mes mille et une nuits* (2016; *My Thousand and One Nights*). In this last book, Ogien’s personal experience of illness “as drama and comedy” informed a vigorous and biting critique of the redemptive virtues commonly associated with illness and of its management by medical institutions. Some people confronted with a similar experience then discovered an iconoclastic discourse on suffering, and, beyond this, a singular voice of the French intellectual landscape. For those who had already embraced this voice, the dual critique of “dolorism” and paternalism reactivated the characteristic tone and themes of a philosophical project that was gradually built, unified, and refined around the thesis or position of moral minimalism now associated with Ogien. The formula that forms the title of the first part of *La panique morale* (2004; *Moral Panic*) is a condensed version of this thesis: “Too much ethics kills ethics.” But what exactly does this mean?

The ABC of Moral Minimalism

At first one is tempted to consider moral minimalism as yet another normative theory to add to the three dominant ethical theories—namely, aretaism or virtue ethics, drawn from Aristotle; deontology, usually associated with Kant; and consequentialism, the best-known version being utilitarianism. Moral minimalism, however, has a more modest ambition: Along with its opposite, moral maximalism, it offers an original way of classifying these theories, and therefore of polarizing the history of moral philosophy, whose recent evolution “seems to have been reduced to a fight against minimalism.”¹ Given the close links between normative and concrete ethics, moral minimalism also serves to intervene in the public and legislative debate regarding the most disputed social issues of the day, which are often resolved by defeating it. Thus, it has a double—heuristic and polemical—dimension, as confirmed by the fact that it prompts an interpretation of the dominant theories or of the reference authors that places aretaism and deontology in the same maximalist boat, while presenting utilitarianism as more likely to satisfy its own principles. What, then, are the principles of moral minimalism?

The most decisive—the one to which moral minimalism may even be reduced—is the harm principle. This principle is inspired by John Stuart Mill’s political philosophy articulated in *On Liberty* (1859), but it can be traced back to the Hippocratic oath, and it is also illustrated by Montaigne’s recommendation to “avoid cruelty.” According to Ogien, this principle, duly explained, is the only one that has an indisputable and universal moral value independent of any existential, metaphysical or religious commitment, and it is therefore the only one that can legitimize our moral judgments regarding the private, and not just public, conduct of individuals. In short: So long as individuals do not deliberately and directly harm others—that is, concrete persons—they should be allowed to do what they want with themselves and their lives. Apart from this principle, all rules that purport to morally govern our conduct express nothing more than social and cultural norms, the validity of which is local and relative even though invariant “laws of nature” are invoked to support them. And while these rules help to explain why a certificate of non-compliance can be attributed to any of our behaviors, they do not warrant a diagnosis of injustice.

The admission of the harm principle is sufficient for moral minimalism to be considered a fully normative conception of morality, which, in contrast to competing normative conceptions, can nevertheless be metaphorically described as “poor” or “deflationary.” What does that mean? A moral theory can be qualified as such for three reasons corresponding to three properties of morality: It can weaken the authority of morality by affirming that it may be reasonable not to always obey its injunctions; it can reduce its rigor by claiming that its principles are not essentially in conflict with actors’ personal desires, interests, or projects; or it can limit its scope by arguing that some voluntary human actions

¹ Ruwen Ogien, *L’éthique aujourd’hui. Maximalistes et minimalistes*, Paris, Gallimard Folio, 2007, p. 13.

resist moral evaluation for logical or conceptual reasons.² These three modes of influencing the requirements of morality are independent of each other; Ogien's moral minimalism concerns only the latter, and therefore consists in limiting the extension of the field of ethics.

The volume edited by Roberto Merrill and Patrick Savidan, *Du minimalisme moral* (On moral minimalism), is a presentation and critical discussion of moral minimalism thus understood, the aim of which, as stated in the foreword, has always been to “side with those who claim the right to be free.” It brings together some twenty contributors, often of international stature, many of whom have had the opportunity to work closely with Ogien and do not necessarily agree to the philosophical means and costs involved in radically defending this right. Indeed, in the long, previously unpublished article that opens the volume, “La morale introuvable” (“Morality nowhere to be found”), Ogien recalls that only certain “implications” of the key principle of his minimalism are “interesting from a philosophical point of view”—interesting in the sense that that they are arresting but also, certainly, unsettling. In particular, these implications make clear that his position, whose genealogy is the subject of a highly stimulating retrospective overview, stands well apart from the trajectory followed by liberal moral and political philosophy since the 1971 publication of John Rawls's *Theory of Justice*. Thus, the so-called “priority of the right over the good,” along with the principle of ethical neutrality of the state that follows from it, classically responds to the epistemic problem of an irreducible divergence between our particular conceptions of the good life. Yet by grounding this priority strictly in the lack of moral value of the relationship to oneself as opposed to the relationship to others, Ogien draws from it conclusions on social issues involving individual consent that are much more clear-cut and sharp-edged than those usually allowed.

Vices and Virtues of Moral Minimalism

It is clear, then, that in spite of having “inevitably” become a tribute book, *Du minimalisme moral* is far from being the complacent defense one might have expected—a defense that would have failed to honor Ogien's philosophy, characterized by the permanent exposure of its statements to objections and to discussion, including with those who least share his ideas. While this discussion varies with each contribution, it ranges in this volume from the exegesis of the ins and outs of moral minimalism to its frank refutation, and includes the testing and revision of certain theses along with their extension to areas little explored by Ogien himself.

The first part of the book, entitled “Duties to oneself?,” is no doubt the most critical. Indeed, the five essays that compose it all seek to rehabilitate the notion of duty to oneself,

² See Samuel Scheffler, *Human Morality*, New York/Oxford, Oxford University Press, 1992, chap. 2.

which Ogien had vehemently criticized by showing its logical incoherence, its normative uselessness when it comes to grounding our obligations to others, and, finally, its perverse effect of legitimizing paternalism—even though, as Stéphane Lemaire remarks later in this volume, paternalism does not necessarily need to postulate the existence of such duties. The phenomenological analysis of the remarkable relation of responsibility that binds us to our own existence (Charles Larmore), the experience of negative moral feelings that illustrate the hierarchical structure of our will (Daniel Weinstock), the defense of Kantian moral philosophy and of the concept of dignity (Alain Renaut), and the re-reading of Mill that allows for perfectionism (Nathalie Maillard) and for recognition of the limits of consent’s normative force (Peter Railton) all fuel a salutary perplexity—which Ogien himself called for—regarding the most provocative and controversial theoretical option of his moral minimalism.

The four essays gathered in the second part of the work are much more favorable to the methodological option of moral minimalism, understood as an “experimental ethics.” In order to grasp the originality of this option laid out in *L’influence de l’odeur des croissants chauds sur la bonté humaine* (2011; published in English as *Human Kindness and the Smell of Warm Croissants*, 2015), it must be recalled that moral philosophy, in its concern for norms and values, is presumed to have little affinity with facts and with the natural and social sciences that are concerned with them. While such division of labor is no longer a dogma, it remains to be seen what moral philosophy should do with the empirical data it gathers from psychology, sociology, biology, or anthropology: Do these data favor one or the other of the three dominant theories, or even moral minimalism itself? There is no consensus on these issues among proponents of the recent but now clearly identified approach of experimental moral philosophy associated with the famous trolley problem, and the interest of the contributions gathered here is to show why. The authors thus largely validate the critical use Ogien made of this approach; they also help to identify the epistemic virtue of moral minimalism, which is to welcome with caution any claim to infallibly ground this or that moral truth—whether this claim comes from experience or from reason.

“Ethics in all its states”: The title of the last and longest part of the volume points to a heterogeneous and initially disconcerting content. What, indeed, is there in common between a point of interpretation of “Hume’s law” (Anna Zielinska), a defense of the incest prohibition (Denis Müller), and a justification of trade unionism (Nicolas Tavaglione)? In fact, the eleven essays gathered here offer an overview of the numerous themes Ogien addressed throughout his thirty or so books, from *La faiblesse de la volonté* (The weakness of will) published in 1993 to *Philosopher ou faire l’amour* (Practicing Philosophy or Making Love) published in 2014. Taken together, these essays attest above all to the profound coherence of a philosophical approach that puts the seemingly most abstract analyses of meta-ethics in the service of critically examining normative theories or their key concepts (such as the concept of autonomy examined here by Christine Tappolet), as well as the most committed proposals in

the various fields of applied ethics, and especially of bioethics (Valérie Gateau). Yet, while Monique Canto-Sperber's essay provides a perfect illustration of this approach in the field of public ethics, other contributors express greater reservations concerning its implications in the sphere of procreation, and of the family in particular. In their view, this approach is unable to ground a right sufficiently protective of individuals, of the ties that bind them, and of the institutions on which they depend (Marie Gaille, Corinne Pelluchon). One should therefore buttress Ogien's project with a philosophical anthropology or a social ontology capable of restoring the relational and non-atomized mode of existence of moral subjects, or, rather, one should correct the anthropology or ontology that he did not explicitly embrace—and for a good reason since according to Hume's law what ought to be cannot be deduced from what is the case—but that nonetheless favors regrettable individualistic normative orientations. In short, their fear is that the reduction of the field of ethics will be achieved through an expansion of the market domain.

“Does Morality Have a Future?”³

No doubt Ogien would have responded enthusiastically to the objections raised here against moral minimalism in order to “ward off certain misunderstandings” and to “evaluate the changes that would have to be made to it.” The 2007 publication of *L'éthique aujourd'hui* (Ethics Today) had prompted similar objections. These were welcomed and commented on in the *Revue de théologie et de philosophie*, to which readers of the present volume may refer if they wish to pursue the conversation.⁴ I propose to participate in this conversation by briefly addressing one such objection, that which accuses Ogien of confusing ethics and politics, or the moral and the legal. According to this objection, if Ogien had correctly distinguished between these two spheres, or between these two perspectives on human action, he would not have wrongly concluded that the justification of an institutional restriction of our liberties follows from the existence of duties to oneself; conversely, he would have seen that the concern to prevent state interference in our private lives does not require the negation of these duties. This objection, which is expressly formulated in several essays of the first part of the book, also deploys its effects in the third part when it comes to questioning the translation of Ogien's moral liberalism in economic and social terms.

A first response would show that even if this confusion were established, it would be less fatal than that between ethics and aesthetics—between moral judgment and judgment of taste—which, according to the hypothesis tested in this volume by Martin Gibert, is mostly the doing of moral maximalists. As Corine Pelluchon reminds us, Ogien constantly “tracked”

³ This is the title of an essay by Ogien published in 2006 at Editions Pleins Feux, Nantes.

⁴ Ruwen Ogien, “Commentaires sur les essais,” in *L'éthique minimale : dialogues philosophiques avec Ruwen Ogien*, *Revue de théologie et de philosophie* 140 (2-3), 2008, pp. 255-279 : <https://rthph.ch/article-de-rthph/commentaires-sur-les-essais/>.

(p. 252) this confusion that introduces an unwelcome relativism into morality. By placing harm and offense *a priori* on the same level, such relativism makes us easily fall prey to moralism, this parody of morality that is itself strongly inclined to paternalism, defined as the attitude of seeking “to protect people from themselves or to try to do things for their own good without taking their opinion into account.”⁵ To select just one revealing example taken from Alain Renaut: Given the complexity of the debate on prostitution and pornography that has opposed so-called “pro-sex” and “anti-sex” feminists since the 1980s, the importance attributed to the “yuck” factor in assessing the immorality of sexual practices must certainly be subject to the exercise—favored by Ogien—of rational criticism of moral norms and values.

That being said, does Ogien effectively renounce the distinction between ethics and politics? The pages of *L'éthique aujourd'hui*, among others, seem clear: Moral minimalism does not seek to absorb ethics into politics, but to import into morality—or to “extend to morality itself” (p. 192), namely to the private domain of interpersonal relations not regulated by the state—the political and legal principles that are now recognized, at least by liberal thinkers, as having to govern the public domain of relations between the state and individuals. If the guiding principles of moral minimalism are derived from the political sphere, then their specificity is not denied. Thus, the notion of “victimless crime” does not refer to a specific category of state intervention and criminal offense, but to acts deemed immoral even though the only harm they may cause is to shock others. It must nevertheless be conceded that minimal ethics also looks to politics for its desired effects: “While the minimalist project is plausible,” and if it is therefore possible to “renounce moral paternalism,” then this project may have “interesting consequences on the practical judgments of those who defend political or legal paternalism” (id.), who would then be willing to be more tolerant towards acts that do not violate the harm principle. The objection therefore still stands: The desire to neutralize such paternalism “at its roots” leads to a form of politicization of morality. Such politicization consists in adapting the field of application of morality for the purposes of a liberal state, and, therefore, in excluding from it the ordinary stuff of our moral lives, where reflections and conversations on what we do (to ourselves), on the kind of life we live, and on the type of persons we wish to remain or become occupy a central place—a place that was recognized by both Mill and Kant, notwithstanding their common opposition to political paternalism.

However, a hypothesis can be made that would justify Ogien’s politicisation of morality, which I draw from his claims, that moral reflection should not “start from scratch but from what exists,” that is, from moral theories and intuitions but also from “norms, values, and principles deemed ‘moral’ in public debates” on so-called “ethical” questions, to which must be added practices deemed moral or immoral along with the institutions that inform and diffuse them.⁶ Indeed, it must be conceded that these judgments are at once ethical and political. This is evidenced by the countless references to Kantian moral philosophy in these debates as well as in many of the opinions issued by the French National Consultative Ethics

⁵ Ruwen Ogien, *L'éthique aujourd'hui*, *op. cit.*, p. 14.

⁶ Ruwen Ogien, “Commentaires sur les essais,” *art. cit.*, p. 264.

Committee since its creation in 1983: Little concerned with the letter of the texts, the reference to Kant easily functions as a smokescreen for ideological or even theological positions that would not be accepted in the context of a democratic, secular, and pluralistic society. One should also recall a textbook case in applied ethics, the Wackenheim case, also known as the “dwarf-throwing” case, whereby a substantial conception of dignity was given force of law by a decree of the French Council of State dated 25 October 1995. As deplored by philosophers and jurists, this was a clear example of injection of morality into the law and of moralization of politics, an example that is paradigmatic of the normative treatment of such issues as assisted suicide, sexual assistance for people with disabilities, or gestational surrogacy. In the context of this institutionalization of moral maximalism, the politicization of morality for which minimalism has been criticized becomes a safeguard and antidote against the placing of our freedom under guardianship.

The moralization of politics, however, also concerns the “social question,” and especially the question of inequalities. In his long essay at the end of the volume on the implications of minimal ethics in the field of “economic justice,” Patrick Savidan faithfully echoes Ogien’s concerns in this regard. These concerns were mainly laid out in *L’État nous rend-il meilleurs* (2013; Does the state make us better?), in which Ogien attacked various liberal attempts to morally justify inequalities. The best known is that of “social liberalism,” associated with the name of Rawls: In this view, inequalities are just if they benefit everyone, including the less fortunate whose situation is improved by them. For Ogien, such justification amounts to giving inequalities a moral signification that they do not have, making the imperative to reduce them a little less pressing. From this perspective, we understand the dual ambition of moral minimalism: to promote a society that is “much more liberal as far as mores are concerned” and “much more egalitarian in economic and social terms.” But can we “uphold this position without moving beyond the framework of minimal ethics?” (p. 217).

This objection is often more coarsely expressed as an accusation of “hyper-liberalism”: A “liberal” position in the moral domain is said to necessarily translate into a rejection of the social protections of the welfare state in favor of the market’s “self-regulating” mechanisms. Yet even though one does not imply the other, and vice versa, several authors in this volume agree that a strictly negative conception of freedom—the only one that moral minimalism retains as commensurate with the harm principle—does not suffice to reconcile moral “laissez-faire” with economic and social “non-laissez-faire” (p. 246). In the wake of the many criticisms that have been levelled at this conception since its formulation by Isaiah Berlin in 1958, Patrick Savidan suggests that moral minimalism could find an “escape route” in Rawls’s theory of justice as equity: In addition to actually avoiding the pitfall of morally justifying inequalities, this theory recognizes a “primacy of the social” capable of developing the overly tenuous normative resources of the egalitarian commitment that drives minimal ethics. While alternative alliances have yet to be considered—ones that are more attached to the strategy of “taking sides” with those directly interested in transforming the existing moral and social

order—the essays gathered here nevertheless show that the question of justice requires thinking about the modes of articulation of ethics and politics more than seeking to preserve their respective autonomy, whose desirability is far from obvious.

Further reading:

- Guillaume Durand, *Puis-je lancer un nain qui le veut bien?*, Éditions M-editer, 2011.
- Charles Fethe, “The Yuck Factor,” *Philosophy Now*, 29, 2000, pp. 30-32:
https://philosophynow.org/issues/29/The_Yuck_Factor.
- Marie Garrau and Delphine Prevaust (eds), *La liberté négative. Usages et critiques*, Paris, Hermann, 2018.
- Charles Girard, “Offense & Préjudice. La liberté d’expression selon Ruwen Ogien,” *Raison publique*, 6 February 2018 : <http://www.raison-publique.fr/article873.html>.
- Stéphanie Hennette-Vauchez, “Kant contre Jehovah ? Refus de soins et dignité de la personne humaine” (2004), *Raison publique*, 13 January 2010 : <http://www.raison-publique.fr/article184.html>.
- Emmanuel Renault, “Introduction,” in *L’expérience de l’injustice. Reconnaissance et clinique de l’injustice*, Paris, La Découverte, 2017 (2nd revised and augmented edition).
- Laurie Shrage, “Feminist Perspectives on Sex Markets,” *The Stanford Encyclopedia of Philosophy*, 2016: <https://plato.stanford.edu/entries/feminist-sex-markets/>.
- Jean-Fabien Spitz, “John Rawls et la question de la justice sociale,” *Études*, 414 (1), 2011, p. 55-65.

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