

## ENVIRONMENTAL VIOLENCE, LIBERALISM, AND RESPONSIBILITY

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This panel is dedicated to certain forms of violence that, because of their characteristics, can escape the control of ordinary justice in a liberal society. The worry that these cases raise is that the search for a more effective way to deal with violence could come to require a special justice that is separate, procedurally or fundamentally, from traditional ideas of legality. Nevertheless, it is also possible that, if we stay strictly within the bounds of ordinary justice, we will be unable to find mechanisms for responding to these forms of violence.

Certainly, the idea of a special justice for certain ends could be very dangerous, and no matter what, whoever attempts it has a duty to test its legitimacy. In spite of that, it is difficult to deny that we live at a time when the parameters of ordinary justice in liberal states are facing a lot of pressure. On one hand, the pressure facing the state comes from social demands for more security, or even just a greater sense of security.<sup>1</sup> On the other hand, the state, in those societies where it is no longer perceived as an enemy, receives pressure from those who demand more positive actions directed at protecting fundamental rights.<sup>2</sup>

The first type of demand is asking the state to act from what could be called a logic of security, a logic of action that can create relationships of power and subordination, when, as Iris Young would say, the weak get security in exchange for fealty.<sup>3</sup> The second type of demand, in contrast, hopes to achieve a state ordered by a system that guarantees the protection of rights, where the objective is to preserve a society made up of free and equal people, who deserve the same consideration and respect.<sup>4</sup>

I believe that it is not too far-fetched to state that the tendency exists in many liberal states to initiate a dynamic like the conservative logic of security, clearly detrimental to the guarantistic system, and that this dynamic has been especially potent since the events of September 11<sup>th</sup>. This would help to explain the growing recourse to special judicial arrangements to deal with some violent phenomena. Now, it is also possible that the ever-greater success of the conservative discourse, especially in the areas of terrorism and immigration, is due to a certain exhaustion of the liberal model from which the foundations of ordinary justice are articulated. In that sense, the conservative turn could be a grouping of demands that, though they are initially responses to the protection of certain rights, end up becoming demands for security because of the very limitations of the liberal scheme.

If that is the case, I believe that before debating the legitimacy of special justice, it would be a good exercise to return to the question, from a liberal position, of whether there is something unsatisfactory in the fundamentals of the liberal model of justice. As a question of fact, it is true that ordinary justice is having difficulty dealing with certain forms of violence. Many talk of the so-called “society of risk” and of globalization as phenomena that bring with them bad behaviors that escape

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<sup>1</sup> See, for example, Silva (1999, 29), Mendoza (2001, 125-138).

<sup>2</sup> On the idea of the state as friend facing the state as enemy of liberty see Fiss (1996, 4-5; 1999, 11-14).

<sup>3</sup> Young (2002).

<sup>4</sup> Sobre el garantismo en general véase, por ejemplo, Ferrajoli (1999, cap. 1).

the individual dimension and that, because of their complexity, cannot be dealt with through the classic tools of responsibility and prevention.<sup>5</sup> But I prefer to emphasize another factual situation that helps to explain the difficulties that the liberal state has in facing phenomena like terrorism and xenophobia.

Some forms of violence cannot be adequately understood without paying attention to a broad conjunction of reasons for action and shared attitudes that comfort, nourish, tolerate or permit the production of harms. This is especially clear when we think about terrorism or xenophobia. As I see it, the existence and durability of both phenomena is connected to the presence of an attitudinal context that we could call situations of “environmental violence.”

The root of environmental violence is those contexts in which attitudes, emotions, and beliefs that a group of persons shares determines the group’s negative perception of other persons or groups. Environmental violence results when these shared attitudes end up destroying one’s capacity to put oneself in another’s place or, even, to see others as people – this result is the fruit of the collective dynamic and its power of attitudinal transformation. In these areas of social interaction, highly emotional language together with the formation of stereotypes, patterns of conduct, and impersonal images end up generating a climate conducive to the production of harm.<sup>6</sup>

Environmental violence is a complex phenomenon, and it is very important to understand because it produces and reinforces certain harms. It’s ethical relevance is undeniable, given its relationship to morally reprehensible and legally prosecutable actions. One could even argue that success in the project of eradicating evils like terrorism or xenophobia is closely related to the capacity we have to face these situations of environmental violence.

Nevertheless, despite its transcendence, environmental violence seems to escape the control of ordinary justice in the framework of a liberal scheme that only allows interference with liberty when a harm results.<sup>7</sup> We are facing a phenomenon centered around, rather than concrete actions, an accumulation of shared attitudes and inclinations, such that it is difficult to establish legal and moral causal relationships with the harms we observe. Thus, although environmental violence before, contemporaneous with, or after the harmful actions is an indispensable factor in creating those actions, there is no obvious way to stop it without abandoning the liberal framework of legitimate interference with personal liberty. Here, preventative effectiveness may require placing greater limits on freedom of opinion, expression, or association, endowing failures to act with greater moral relevance, keeping in mind the cumulative effect of the acts, relaxing the demands proving liability, or causing the punitive intervention of the state in the face of a harmful result, or, even, when a legal right is endangered. These methods are hard to justify from a model of liberal justice that has its epicenter in the principle of harm to third parties and in the primacy of freedom of expression. For this reason, many would prefer to accept the cost of being unable to respond to the social demands that are beginning to be channeled through the logic of security if the price of response is to abandon or undermine these standards.

In this paper I attempt to argue that liberalism should not withdraw too quickly in the face of the conservative onslaught, locking itself into its traditional framework, but rather should develop an

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<sup>5</sup> Sobre la sociedad del riesgo, el mundo tecnológico y la globalización como fenómenos que desafían nuestra concepción tradicional de la ética y del lugar que ocupa el individuo en las interacciones sociales véanse, por ejemplo, Beck (1998), Jonas (1984), Scheffler (1995).

<sup>6</sup> Véanse, May (1992, 36-54, 73-86), Glover (1999, 99-116, 349-354).

<sup>7</sup> En términos rawlsianos, el principio del daño a terceros, entendido como la vulneración de derechos de otros, resumiría la idea de que la libertad sólo puede restringirse en aras de la propia libertad. Véase Rawls (1971, 204 y 243-250). Dejaré ahora al margen el tema de la igualdad.

imaginative force to figure out how, from a guarantistic logic of protection of rights, it is possible to deal with situations like that of environmental violence. The context in which I will deal with this issue is the moral foundation of subjective responsibility. When we think about attitudinal environments that make possible or favor the production of harms, many of the limitations that trip us up come from the limitations of the model of subjective responsibility discussed above.

As is well known, the liberal scheme of subjective responsibility is centered on the idea that people respond primarily to the negative results produced by their intentional actions.<sup>8</sup> Although people often extend this basic rule of responsibility, the restriction it imposes on personal liberty makes it difficult to justify reproach if it does not exist: one acts, if his conduct has not contributed directly or indirectly to the production of harm and if there is no real or potential psychological nexus with the harmful result.<sup>9</sup> Beyond those parameters, it is argued, we return to the rules of premodern societies that demand adherence to certain ideals of human excellence where people can be responsible for something just because it happens or for the harms other individuals cause in exercising their own autonomy. Such a return could open the door to doubtful moral schemes like collective responsibility, or to institutions like objective responsibility that do not respond to the logic of reproach directed at individuals, but rather to the question of what is the legitimate way to distribute the social costs of harms that are not the fault of any particular actor.

The liberal model of subjective responsibility has managed to instill itself in our ordinary morality, and it is so deeply seated that any attempt to modify or doubt its fundamentals or assumptions is received with great reticence. In spite of this, I believe that the moral relevance of environmental violence requires making an effort to reexamine some of those fundamentals through a guarantistic lens. Through this examination, I propose keeping in mind questions such as the following: Do our attitudes and emotions have ethical importance? Can our voluntary participation in times of environmental violence create moral duties? And, finally, can we share the responsibility for others' actions?

## I

Beginning with the first question, in the last few years we have lived through a resurgence of ethical beliefs that place emotions, attitudes, and general character in the center of the moral universe. The extreme thesis in this direction consists of defending the proposition that people can be responsible not only for their acts but also for their characters.

It is obvious that our psychological states occupy a central place in the attribution of subjective responsibility, and, for this reason, we return to the principle of blame. As Peter Strawson indicates, we react in a different way when someone steps on our hand while trying to help us than when the person does the same thing while trying to hurt us, though the pain is identical.<sup>10</sup> Nevertheless, the thesis of responsibility for one's character does not merely try to emphasize the importance of psychological states in judging that someone is to blame, but also maintains that we may be responsible for these states independent of their practical effect on our actions.

The resistance of the liberal model, instilled with Kantian ethics, to allowing the existence of a figure like responsibility for one's character can be summarized in two maxims: one is that there is no responsibility without action, and the other is that there is no responsibility without control. The first maxim is based on two arguments. On one hand is an epistemological argument that we cannot

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<sup>8</sup> Por ejemplo, Mackie (1977, 208-209), Zimmerman (1992, 1089).

<sup>9</sup> Tienen cabida figuras como la responsabilidad por negligencia y la responsabilidad vicaria.

<sup>10</sup> Strawson (1993, 49). El elemento intencional también permite variar la descripción de una acción.

know mental states except through their external manifestations: actions. On the other hand is the moral argument that actions are the only object of ethics, not for an epistemological reason but rather because the ultimate end of morality is not personal excellence.<sup>11</sup> The second maxim states that we cannot be responsible for the psychological states that make up our characters, their development, or their transformation, because these are not susceptible to individual willpower.

Confronted with the liberal arguments, responsibility for one's character has been defended from several philosophical traditions, of which I am interested in emphasizing the theories of virtue and existentialism. The proponents of virtue, following the Aristotelian ethic, maintain that we can be responsible for our characters because emotions are essential in the moral world; first, because they constitute an indispensable instrument for guiding conduct; and second, because they have intrinsic value as parts of a good life.<sup>12</sup>

Thus, authors like Justin Oakley, Michael Stocker, or Nancy Sherman maintain that ignoring the practical effects of our emotions, understood as a structure of beliefs, desires, and affections, keeps us from a full understanding of situations with moral relevance. For this reason, they insist that emotions have been incorrectly understood and relegated by the Kantian ethic, which sees them as capricious or as a species of mental illness that keeps us from being reasonable.

The ethic of virtue holds that having certain emotions and attitudes enables better understanding of the situations of others, at the same time that it increases our ability to figure out how to behave towards them. Someone who lacks emotions like compassion, sensibility, or generosity, will have difficulty understanding the magnitude of suffering of a person and his needs. In this sense, emotions contribute to our capacity to "put ourselves in another's shoes," a basic requirement for treating people as ends and not as means.<sup>13</sup>

Actions guided only by a sense of duty could be insufficient to act correctly from the very parameters of the Kantian ethic. There will be times when a Kantian agent, motivated only by duty, will not have sufficient capacity to ascertain the correct action, and, for that reason, will fail in fulfilling his duty. This will happen when the attempt to remove oneself from any emotion, or one's own lack of emotions, leads one to have false beliefs about relevant moral issues or provokes a certain inability to recognize others' needs.

As I have pointed out, virtue theorists also claim that it is wrong to limit the object of ethics to actions. Assuming that one person is better than another in moral terms when he has an adequate character, they hold that emotions have intrinsic value that cannot be reduced to instrumental or motivational value. On one hand, there could be something inherently good or bad in having certain desires or attitudes, although they do not translate into actions. On the other hand, character does not only matter because actions matter; rather, actions may be important because they reflect our character.<sup>14</sup>

The first argument in favor of responsibility for one's character seems difficult to question. In effect, emotions could constitute a basic part of the moral world in the way that they contribute to our ability to put ourselves in another's place, making possible a broadening of our moral imagination. Recognizing this point shows the inadequacy of a strict version of the Kantian ethic that, because it

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<sup>11</sup> Sobre los argumentos liberales para rechazar el perfeccionismo véase, por ejemplo, Feinberg (1988, 217-317).

<sup>12</sup> Sobre la posición de Aristóteles en este segundo punto, véanse, entre otros, MacIntyre (1985, 146-164), Oakley (1992, 1, 54 y 111-113).

<sup>13</sup> Oakley (1992, caps. 1, 2 y 3), Stocker (1987, 60), Stocker y Hegeman (1996, 152-160), Sherman (1997, cap. 4; 1999, 297-298). También Williams (1976, 207-229), Glover (1970, 188-191), May (1992a, 60), Blum (1988, 485-486), Tronto (1987, 657).

<sup>14</sup> Como ejemplo de la posición que adopta la ética aristotélica en este punto, véanse Oakley (1992, 54-56, 63, 109-113), Adams (1985, 4-6, 26-29). Véase Glover (1970, 9-13) sobre la posición de Aristóteles.

erases the role of emotions, ends up becoming a dehumanized ethic. Jonathan Glover, for example, responds to this vision. He insists on the need to humanize the ethic, offering greater weight to human psychology and recognizing the role that it plays as much in moral inhibition as in moral imagination.<sup>15</sup>

Nevertheless, the attempts to ascribe intrinsic value to emotions as helping to reach personal excellence, which is the ultimate end of morality, is clearly questionable. The only reasons theorists of virtue offer for this intrinsic value are, on one hand, that emotions like love or compassion are good *per se*, and, on the other hand, that ethics should not be reduced to action. But, if we do not assume an ethic of virtues from the beginning, these reasons are not a solid argument for questioning a moral vision that values emotions only for their importance to human behavior. More importantly, I believe that it is wrong to state that a person who acts in perfect harmony with certain adequate emotions is better than another who acts correctly despite his conflicting emotions.<sup>16</sup> Sometimes we accord greater moral merit to that person who acts correctly in spite of the fact that he possesses emotions and inclinations that conflict.<sup>17</sup>

It is not difficult to see that we generally prefer people who have the right feelings toward others to those who do not.<sup>18</sup> But we should distinguish an attitude like rejection from a moral attitude like censure or blame; only the latter is connected to attributing responsibility. Emotions only become ethically relevant if we assume that they make some practical difference in the short or long term. What happens is that emotions generally make a practical difference. For this reason, even when Oakley's observation about the legitimacy of requiring greater emotive meaning in practicing professions like that of health workers seems wise, the reason for this demand is not connected with ideals of individual excellence, but rather with the conviction that the way these professions operate has a direct effect on the quality of patient treatment.<sup>19</sup>

In any case, the plausibility of the character responsibility thesis does not require assuming that our psychological states have intrinsic moral value. First, in order to attribute responsibility it would be sufficient to recognize that our emotions have practical transcendence. This would constitute a partial answer to the moral argument of liberalism against responsibility for character. Thus, although we may not accept the idea that we can reproach people based on perfectionist standards, if parts of one's character can influence our behavior, we must also have moral reasons for judging them with reproach.

The challenge that defenders of the character responsibility idea face lies elsewhere: in the problem of control, that is to say, in the question of whether we are merely passive subjects of our characters or if, on the other hand, we have the ability to acquire characteristics, transform them, or avoid them.

It is common to believe that the moral ambit is the ambit of liberty. We attribute responsibility to human beings because we assume that they are capable of willfully translating their desires into actions. The reticence of the Kantian ethic to introduce emotions into the moral calculus is owing to the idea that, unlike our actions, our characters cannot be controlled with willpower. In this sense, emotions are something that simply happen to us.<sup>20</sup>

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<sup>15</sup> Glover (1970, cap. 9; 1999, esp. 99-105, 408-409).

<sup>16</sup> Confrontar Oakley (1999, 55), Sabini y Silver (1987, 169).

<sup>17</sup> Véase, por ejemplo, Hampshire (1989, 189).

<sup>18</sup> Sabini y Silver (1987, 169).

<sup>19</sup> Oakley (1999, 107).

<sup>20</sup> Por ejemplo, Kant (1996, 390, 398, 411-412 y 454).

To analyze the success of the Kantian perspective on this issue it is important to point out, preliminarily, that the challenge determinism can pose to the institution of responsibility is much deeper than the problem of emotional control. Determinism, like general perspectives on the human position in nature, considers individuals to be not genuine agents, not to cause, but rather to be caused. For this reason, under this doctrine, individual acts can only be understood as events that happen in an endless series of happenings and causal chains. If determinism were true, or if its truth were relevant, we might be facing a more difficult problem than that posed by Kant in terms of emotions: given that we include intentions in the description of an action, should we also consider the possibility of judging actions with reproach. In effect, in cases where our desires, attitudes, and beliefs completely escape our control, and if this were determinative for attributing responsibility, we would not be able to hold ourselves responsible for our actions.

Although, because of special constraints, I will not embark on the problem of determinism in actions, I believe that good arguments have been made for crediting a determinist challenge, such that it seems reasonable to continue maintaining that people can be held responsible for their actions.<sup>21</sup> This conclusion, together with the idea that action is connected to intention, seems to imply that we can also be held responsible for our psychological states.

Now then, although paradoxically the indeterminacy of our actions may be connected with the indeterminacy of the elements of our character, there are independent arguments for being more strict in terms of the element of control in the context of responsibility for psychological states. As I see it, this asymmetry between character and actions can be explained by two interrelated factors: the first is that in terms of responsibility for one's character, we ask if a person deserves moral disapprobation for having or not changing states that are merely internal, independent of any external manifestation. The second is that our reasons for adjudging a character as blameworthy, given that we cannot use an idea like harm, directly depend on the plausibility of demanding certain psychological behavior of individuals. This requires showing that we have the capacity to dominate our emotions in some way, and, certainly, that we can be something else than we currently are.

In this way, the thesis of character responsibility requires placing special emphasis on the theme of control, an issue that in terms of actions seems to worry us in a more indirect way. From here, the defenders of this broadening of responsibility do not try to limit themselves to the assumption that determinism is irrelevant, but rather center their arguments on showing that we have the necessary control to deserve judgments of reproach for our characters.

These authors warn, in the first place, that the degree of control that would justify a judgment of reproach for our emotions would be similar to elements related to avoidability and foreseeability that we deal with in terms of actions. Even when we cannot stop an emotion at will, in the same way a driver cannot stop a vehicle whose brakes have given out, we can, nevertheless, have placed ourselves in earlier situations adequate to avoid continuing to have those emotions. Just as we would say that the driver can be responsible for the damage that his vehicle causes because he did not check the brakes, if we can influence our emotions, we can also be reproached for failing to avoid them. This idea is complemented by the factor related to foreseeability. Stocker discusses the level of foreseeability that would justify attribution of responsibility. Suddenly, as happens with many complex actions, we cannot foresee the exact results of a possible intervention in our emotions. Now then, the attribution of responsibility does not require the capacity to successfully foresee what will happen. Like responsibility for actions or omissions, what would justify a judgment of reproach

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<sup>21</sup> Véanse las propuestas que provienen tanto de los compatibilistas como de los incompatibilistas. En este sentido, Nagel (1995, 35-41), Berlin (1988, 137-139), Frankfurt (1986b, 70-80), Fischer y Ravizza (1998, 28-34) y Strawson (1993, 46-66).

would be the possibility of intervening in our emotions such that we could change them, without necessarily knowing the exact effects this intervention would have.<sup>22</sup>

In the second place, the defenders of this broadening of subjective responsibility maintain that, effectively, we have this degree of control. In spite of the fact that I will not begin to really develop the different arguments in this area, it is reasonable to state that psychological states are not beyond our willpower for the following reasons. On one hand, as has been shown by psychological studies of emotional learning from our infancy and of techniques of psychoanalysis, people are not mere passive subjects in the formation of our characters.<sup>23</sup> On the other hand, we have the capacity to identify our emotions and reflect on how we have acquired them.<sup>24</sup> Sometimes this exercise in introspection can be done without great psychological effort. At other times, in contrast, we will need to rely on more complex psychoanalytic exercises like those that psychoanalytic techniques aim to contribute.<sup>25</sup> But leaving aside extreme cases of psychological incapacity, in which we would objectify our reaction to a subject, it makes sense to affirm that the very possibility of possessing desires or wills of a second order means being able to see ourselves as we are, to understand our motivations and critically evaluate those internal states.<sup>26</sup> Finally, we can also cultivate our emotions and attitudes, just as we can change them, once we are conscious of what we have. As Susan Wolf indicates, when we have a “sane deep-self,” in contrast with our merely superficial “I”, we have both the ability to self-evaluate critically and the ability to transform ourselves until we reach our full potential.<sup>27</sup> Although cultivating and dominating our emotions is not easy work, the way in which we can actively intervene in this process can consist, simply, in making an imaginative effort that allows us to acquire greater sensibility in a given situation. This effort is the same one that, for example, people who become vegetarians for moral reasons attempt to make. Constant exercise in imagining the treatment of animals and then consciousness of their suffering and living conditions permits the development of emotions like repugnance in the face of a plate of meat and reduces the desire to eat this type of food.<sup>28</sup> To influence our emotions, then, imaginative effort is required, as well as the exercise of resistance to habit and passive attitudes. In this way, even though regulating our emotions is a complex activity and not completely within our reach, as Oakley observes, acquiring abilities like learning a new language or driving a car can be as complex and difficult as cultivating our emotions.<sup>29</sup>

Certainly, thoughts like those just discussed allow the assumption that we can have a reasonable degree of control over our character. If this premise is accepted, it is legitimate to doubt the Kantian thesis on emotions and to see responsibility for our emotions and attitudes through another lens. With that, a person could be responsible for an aspect of her character when, though she is instrumental in its development and conscious of possessing it and of the fact that she can change it, she has not tried to change it or to minimize its harmful consequences.<sup>30</sup>

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<sup>22</sup> Véase Oakley (1992, 128-130, 135-136), Sherman (1999, 300-304), Stocker y Hegeman (1996).

<sup>23</sup> Sherman (1999, 304-319).

<sup>24</sup> Véanse, Oakley (1992, 136), May (1992, 62-63, 70), Sherman (1999, 316).

<sup>25</sup> Sherman (1999, 313-319), May (1992, 69).

<sup>26</sup> Sobre la posibilidad de análisis autocrítico de nuestras actitudes y emociones, véase también Audi (1991, 311-314).

<sup>27</sup> Wolf (1987, 60).

<sup>28</sup> Diferentes ejemplos en este sentido pueden encontrarse en Glover (1999, 408-409), Sherman (1999, 301).

<sup>29</sup> Oakley (1992, 140).

<sup>30</sup> May (1992, 70).

Showing that emotional control is possible and demonstrating its instrumental value seems at first glimpse sufficient to justify reproaching a person for his character. Nevertheless, I believe that this cannot be. The practical importance of our emotions and attitudes leads us to the possibility of establishing active responsibility for them – of justifying a moral duty to cultivate certain emotions and change others – but this only holds true if we can show that these emotions can be influential in producing harms. At the same time, our reproachful reaction to these emotions will occasionally produce a harmful result, and, for this reason, will never just be a mere pronouncement of responsibility for psychological states. As I understand it, attitudes and emotions, on their own, can only generate attitudes of dislike. Once we assume that character traits matter for their capacity to make a practical difference, the only thing we can justify in certain circumstances is attributing responsibility for a result to a foundation of attitudes. But this is not insignificant.

Although the thesis of direct responsibility for character is not justified, the instrumental value of our emotions and attitudes offers arguments for extending individual responsibility such that we can propose some answer to the problem of environmental violence. I refer to the possibility of predicating shared responsibility beyond causal intervention in contexts of group interaction where individuals participate voluntarily. This extension of responsibility has been defended from a viewpoint that labels itself “existential socialism.” This position permits us to relate the instrumental value of having certain emotions and attitudes with the practical importance that attitudes acquire when they are shared.<sup>31</sup>

This philosophical current is close to group dynamics in two senses. On one hand, it defends the proposition that the individual “I” is socially configured and that, for that reason, the subject cannot think of himself independently of his social bonds and attachments. On the other hand, it maintains that the individual is not a mere passive subject of his environment, building a social identity through attachments and group participation.

This point of view makes it possible to evaluate the harms of collective interaction in a different way than arises in a traditional scheme of responsibility, which only admits the possibility of sharing culpability when each one of the subjects has played a causal role in the reprehensible deed.

## II

Social existentialism offers several arguments that could lead us to justify attributing shared responsibility for harmful results in periods of environmental violence: First, it accounts for the practical relevance of shared emotions and attitudes. As Larry May observes, group interaction, on one hand, transforms the types of attitudes and convictions that individuals have and the force with which they maintain them, and, on the other hand, facilitates the production of harmful results by creating climates favorable to the production of harms.<sup>32</sup> To demonstrate the transformative power groups have over individual values and attitudes May looks to the functioning of both groups with formal organizational structures and those without them.

In the case of corporations, this transformation of attitudes, feelings and values results from the combination of the structural elements of the entity and the expectations and roles of its members.<sup>33</sup> Corporations design procedures, roles, and codes of conduct, conforming the type of actions that a person can undertake within the context of his own authority. Acting outside this context can lead to non-promotion, loss of prestige and earnings, or unemployment. These factors motivate individuals

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<sup>31</sup> Véanse, May (1992, 18-23, 149-152), Lucas (1993, 80-819).

<sup>32</sup> May (1992, 75-78).

<sup>33</sup> Véase, May (1992, 75-78).

to submit to corporate directives and adjust their values to those promoted explicitly or implicitly by the corporation, generating a certain degree of servility. In this way, not having something on the corporate agenda – when something is not protected by internal procedures and norms of conduct – can promote members' passivity in certain situations. May gives the example of the university community and the problem of sexual harassment of students by professors.<sup>34</sup> In the past, the absence of an explicit code of conduct on this issue and the lack of clear internal procedures to deal with these situations permitted the development of a culture of tolerance toward such conduct, resulting in implicit acceptance of the practice.

In terms of unorganized groups, the transformation of individuals' values is a product of the social identification that characterizes them. These groups have important socializing effects because they generate a context of interaction that prioritizes elements like solidarity, camaraderie, common interests, or simple joint reactions to events that affect the group as a whole negatively.<sup>35</sup> This framework alters personal identity, modeling individual values and attitudes, possibly through imitation because, as Charles Taylor argues, people seek recognition from others, or certainly because the group becomes a protective mechanism for personal identity in the face of external forces.<sup>36</sup>

This transformative power of group membership has a very important effect on actions, creating a climate that increases the risk of harms. Referring to racist attitudes that identify a group, May indicates that “the individual racist attitudes considered as an aggregate constitute a climate of attitude and disposition that increases the likelihood of racially motivated harm. The climate of racist attitudes creates an atmosphere in which the members of a community become risk takers concerning racial violence.”<sup>37</sup> At the same time, belonging to these groups has an important effect on individual behaviour. People, wrapped up in the group dynamic, can invert value priorities, generate stereotypes, decrease their scruples and moral sensibilities, and end up doing things they never would have done without the influence of the group.<sup>38</sup> This close relationship between the group and the acts of its members makes it insufficient to adopt a strictly individual analysis and evaluation of harmful results. In sum, attitudes and reasons, when they are shared within a group, have a practical transcendence that is difficult to deny. Taking this point seriously requires us to again raise the issue of who is responsible for the harms produced in these contexts.

In the second place, in contrast to what happens in objectively defined groups – in those where group membership depends on elements out of individual control and that, consequently, are morally irrelevant – in this case of subjectively defined groups, characterized by certain shared psychological dispositions, it is plausible to argue that people choose to belong to these groups. People participate in these groups through their attachments, convictions, preferences, and characteristics. These psychological elements manifest themselves externally in multiple forms: from explicit manifestations like approval of certain ideas, expressions of identification, or shows of support for actions like voting for a political party, economic contribution to a cause, or active collaboration in a group activity. Thus, these attachments should not be seen as simple voluntary exercises of individual agency in the development of individuals' life plans. These attachments have a more profound effect on their subject. Just as existential socialism warns, they contribute to the formation of our identities as individuals. They make us see ourselves as members of groups, making possible

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<sup>34</sup> May (1992, 76-77).

<sup>35</sup> Véase, May (1992, 73).

<sup>36</sup> Taylor (1991, 31-41, 45-53).

<sup>37</sup> May (1992, 47 y 46-49).

<sup>38</sup> Véase, May (1992, 78-79).

situations where the pronouns “I” and “we” become interchangeable. Along these lines, J.R. Lucas observes that identification with a group makes us see group actions and decisions as our own, such that we feel proud of group accomplishments, embarrassed for group failures, and guilty for group harms.<sup>39</sup>

The other side of this connection between personal identity and group membership is in external reaction to the individual himself. In the same way that each one of us identifies with the groups in which we participate, others also identify us with those groups. For this reason, the presence of a context of shared group attitudes and reasons allows others to assume that a general agreement exists and that individuals can be identified with the acts that occur in the regular course of community activity.<sup>40</sup> For that reason, Lucas indicates, “it is entirely reasonable for anyone else to hold me to account for what was done (...). I am presumed to go along with it because I did not dissociate myself from it.”<sup>41</sup> In this way, it can be legitimate to include group members in the “plural subject” that shares responsibility for the harms, independent of the type of action that each individual has undertaken.<sup>42</sup>

Certainly, the danger of certain shared attitudes and the voluntary character of our social attachments provide an argument for predicating shared responsibility on group dynamics except that this assumes the totalitarian ideal of “all for one” that Jaspers correctly questioned as “an error akin to the laziness and arrogance of average, uncritical thinking.”<sup>43</sup> But it is important not to convert this generalized responsibility into something counterproductive, avoiding what happens, as Hannah Arendt warned, when she stated that “where all are guilty, nobody in the last analysis can be judged.”<sup>44</sup> Thus, even when this generalized responsibility is legitimate, we should recognize that it may be unjust in certain situations. It is important to remember that shared responsibility for our emotions and attitudes is always a *prima facie* judgment. It establishes a presumption in favor of the responsibility of group members for a harmful result, reversing the burden of proof in moral evaluations. But there are ways in which a person can free himself from this responsibility. What these mechanisms are is a question that cannot be separated from the individual duties that accompany group participation which, if not fulfilled, carry with them shared responsibility for harms. For this reason, satisfactory evaluation of the reach of shared responsibility requires analyzing the question of what duties arise in contexts of environmental violence.

### III

Leaving aside the question of the reach of our general duty of action in risky situations, it seems reasonable to state that voluntary participation in cultures of environmental violence generates certain positive duties with a special character. As we all know, special duties are not the same for all people because they depend on the circumstances in which one finds oneself and on one’s relationship with other people.<sup>45</sup> Although since the development of liberalism, special

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<sup>39</sup> Lucas (1993, 77, 80-81).

<sup>40</sup> Véase, Lucas (1993, 76-77).

<sup>41</sup> Lucas (1993, 78). También Feinberg (1992, 67-69).

<sup>42</sup> Como indica May (1992, 50) respecto a la actitudes racistas, “the racist who does not directly cause harm, but who chooses to maintain unsuppressed attitudes not significantly different from those of other racists whose attitudes he or she knows, or should know, directly cause harm, should share in responsibility for the racial harms perpetrated by those in society who share the racist attitudes (...). The racist who not cause harm is responsible because he or she shares in the attitudes and dispositions that, but for good luck, would cause harm”.

<sup>43</sup> Jaspers (1948, 41-42). También Kelsen (1979, 135; 1953, 21-22), Bovens (1998, 93).

<sup>44</sup> Arendt (1964, 277-278; 1992, 278).

<sup>45</sup> Hart (1984, 77-90).

attention has not been paid to special positive duties, certain fundamental duties that arise from special situations and relationships have been recognized. Following on Tony Honoré, we could summarize these fundamentals of special duties based on circumstances like the occurrence of harmful acts or the creation of risky situations as the performance of a social role or position of responsibility, when one is in a better situation than others to act, one has received a benefit, or one has acquired a commitment.<sup>46</sup>

If we assume the moral relevance of sharing certain attitudes because: a) attitudes, when they are shared, create climates propitious to the production of harms, b) being part of these attitudinal groups is, in large part, voluntary, and c) participating in these groups contributes to the configuration of our own personal identity and to the way in which others perceive us, it is possible to argue that contexts of environmental violence generate special duties that share the fundamentals of duty that liberalism itself embraces.

The first special duty arises from the climate of risk that these groups create. In these contexts, their members share the accumulated duties of care and, for that reason, the position of guarantor as “risk takers” towards the possible harmful results that can arise from group interaction. At the collective level, the set of group members shares the duty to ensure that the generated risk does not become actual harm, with the consequential shared responsibility beyond that for individual actions that each one has undertaken.

In the second place, belonging to subjectively determined groups makes special duties arise when a harmful result has already occurred. In general, group members share the obligation to minimize the effect of the harm and to work towards future behavior such that this harm will not occur again – this is especially relevant in the context of phenomena like terrorism and xenophobia, where harms tend to repeat themselves over time. These after-arising duties can be summarized by the standard of responsibility of juridical persons that French pleads for: the *Principle of Responsible Adjustment*.<sup>47</sup> This standard, applied to the context of environmental violence, would indicate that those who have contributed to a harm directly (with their actions) or indirectly (with their attitudes) should undertake positive actions to remedy its effects or avoid its repetition. If these actions do not come to pass, it will be legitimate to attribute shared responsibility for the harm.<sup>48</sup>

In the third place, when we speak of harms that are closely related to an environment of shared reasoning and attitudes, the production of a harmful result generates other special duties whose fulfillment can permit an individual to free himself of shared responsibility. As was discussed earlier, a determination of shared responsibility is always a *prima facie* judgment that inverts the burden of proof in a moral evaluation. The fact that we share the reasoning and attitudes of those members of the group that have done harm legitimates an external reaction of presuming that, in the same circumstances, we would have acted in the same way. But this is a presumption that it should be possible to disprove in order not to fall into the totalitarian and counterproductive justice discussed earlier. What this presumption does is create a special duty to distance oneself from the group through positive actions and explicit manifestations of

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<sup>46</sup> Honoré (1999, 55-60)

<sup>47</sup> Véase, French (1992, 12-17 y 166).

<sup>48</sup> La responsabilidad que surge de no dar cumplimiento a este principio no puede verse como una asunción de una *backward causation*. No es que se esté suponiendo que los comportamientos futuros permitan mostrar que hubo una determinada intencionalidad cuando se produjo el daño. Este principio permite, meramente, cambiar nuestra valoración moral de aquellos que indirectamente han estado involucrados en algún suceso pasado. Véase, French (1992, 13 y 166-168).

repulsion and disagreement with a certain behavioral pattern.<sup>49</sup> The value these distancing actions can have can only be analyzed on a case-by-case basis in terms of the circumstances surrounding the group interaction. On some occasions, we will require that the distancing take effect before the harm; on other occasions, in contrast, it may be sufficient to take positive actions *a posteriori*. The prior distancing, which would be no more than a demand grounded on the existence of the presence of a climate of risk, could be summarized in the following terms of Lucas:

Distancing can take many forms. One can speak against the proposal, one can try and prevent it, one can disavow it, one can protest, one can resign, one can reprimand and discipline. Often it is the rationale of actions which have no serious chance of being effective. A man may reckon that the chances of his being heard and heeded are nearly nil, but still he owes it to himself to witness to the truth and to stand up for things he believes in, even though ineffectively. He goes to public inquiries, writes letters to papers, lobbies his MP, for if he did not, he would make himself an accomplice to the course of events he is in fact unable to prevent. He stands because he can no other if he will not go along with the bad things being done that would otherwise be done in his name.<sup>50</sup>

Posterior distancing, in contrast, can consist of actions of public denunciation of the harmful practice and in the renunciation of the benefits of the fruits of group interaction. In this sense, McGary observes, “in either case the moral agent is required to do something that separates him from the faulty practice. This may require complete dissociation from the group that he identifies with. Some people will be required to do more than others because of their power and influence, but this is as it should be. In advance we cannot say with great precision what sufficient dissociation entails because different factors are involved from case to case.”<sup>51</sup>

In sum, it is reasonable to state that participation in subjectively based groups creates an environment of special duties. These duties are justified by the very fundamentals of duty that liberalism requires and, when these duties are not fulfilled, have as a counterpart shared responsibility for harms.

#### IV

In this paper I have offered some arguments to justify, from a guarantistic logic, a statement of shared moral responsibility in contexts of environmental violence. As free agents, we are not only capable of acting to harm others, but we are also able to maintain

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<sup>49</sup> Esto permite explicar, por ejemplo, porque en España el silencio habitual de los miembros del partido político Herri Batasuna o de la plataforma Euskal Herritarrok ante la actividad terrorista de ETA genera una reacción permanente de reproche que ha contribuido, junto con otros factores, a la ilegalización de este partido. Dado su claro vínculo como mínimo actitudinal con la banda terrorista, la ausencia de actos de condena explícitos por parte de HB después de cada atentado nos permite ubicarlos dentro del sujeto plural que comparte en una media u otra responsabilidad por estos hechos. Su no disociación se valora de forma diferente a la ausencia de una manifestación explícita en este sentido por parte de otros ciudadanos españoles. Ciertamente, también exigimos manifestaciones de repulsa a aquellos ciudadanos que desempeñan un rol institucional. Pero esta exigencia no se fundamenta en la presuposición de que comparten las razones para la acción de ETA sino, meramente, en las obligaciones que vinculamos al cargo que ocupan. Cuando, por el contrario, afirmamos que los miembros de HB deben condenar estas acciones terroristas lo hacemos, especialmente, por sus vínculos ideológicos con ETA. Entonces, el juicio de responsabilidad compartida que se dirige a HB se justifica en que, precisamente ellos, no se han distanciado lo suficiente.

<sup>50</sup> Lucas (1993, 85).

<sup>51</sup> McGary (1991, 84-85).

attitudes and choose social attachments that end up harming others. In a society in which individuals are not isolated, and in which all deserve equal consideration and respect, shared responsibility is a just price for our freedom. I believe that liberalism will be enriched by taking seriously the ethical importance of our shared attitudes and by paying attention to the harms we create together. There is no doubt that this change, being internalizable as a code of conduct, could have a significant motivating effect; it would make us more cautious in our social interactions. But I will also attempt to emphasize here that morally justifying the possibility of reproaching someone for other than intentional actions themselves offers a new point in the game for raising the question of juridical responsibility.

Obviously, a moral statement of shared responsibility will never be easily translatable into juridical terms, nor is it the intention of this paper to show how exactly it would be translated. Furthermore, we can also question whether law is the ideal instrument for stopping situations of environmental violence. In spite of these considerations, the thesis I have developed could lead us to justify some non-conventional juridical features or to reconsider the reach of other, more conventional ones.

In schematic form: On one hand, if we accept that our participation in certain groups can generate special positive duties, related to duties of care and distancing, it would make sense to adopt a new perspective on the juridical devaluation of some omissions. To take one example, this is what happens with an omission like the failure of political organizations like Herri Batasuna in Spain to condemn terrorist attacks, though those organizations have clear attitudinal connections with terrorist organizations. The legitimacy of the idea that this omission carries with it juridical consequences comes from the idea that those who approve the reasoning of terrorists have not distanced themselves sufficiently.

On the other hand, and with the reservation that criminal law may be an adequate mechanism for stopping the harms related to environmental violence, we can also justify some modalities of illicit danger, denominated “abstract,” as long as they follow a guarantistic logic.<sup>52</sup> As is known, these mechanisms make it possible for the state to intervene before not only a harm occurs, but also before a good legal system is endangered.<sup>53</sup> As I understand it, if we admit the general dangerousness of certain attitudes, when shared, that is a reason to interfere in these ideological environments – even when it is not possible to prove that a real risk of harm exists – to avoid to possibility that those attitudes could generate a climate conducive to the transformation of thoughts into harmful actions. How far can these methods go without sacrificing liberal principles is a difficult question to answer, but that should not keep us from taking them seriously as a legitimate instrument for dealing with environmental violence.

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<sup>52</sup>Obviamente, la proporcionalidad de la consecuencia jurídica prevista será siempre un elemento básico para valorar la corrección de una medida jurídica.

<sup>53</sup> En España, uno de los delitos de peligro abstracto más controvertidos es el previsto en el artículo 607.2 del Código Penal de 1995. Reza así: “La difusión por cualquier medio de ideas o doctrinas que nieguen o justifiquen los delitos ... (de genocidio), o pretendan la rehabilitación de regímenes o instituciones que amparen prácticas generadoras de los mismos, se castigará con la pena de prisión de uno a dos años”. A esta figura también responden la apología al terrorismo (art. 578), la ilicitud de las asociaciones que promuevan la discriminación (515.5) o, fuera ya del marco penal, algunas de las previsiones para la ilegalización de un partido político de la también muy controvertida LOPP de 2002.

Finally, moral arguments in favor of shared responsibility could be translated juridically through the adoption of a different version than the strictly individual model when we evaluate certain conduct. We have a clear example in what has been denominated “cumulative illegalities.”<sup>54</sup> Here, individual conduct that, in and of itself, is not juridically relevant or harmful, acquires relevance when it appears that the reiteration of this type of conduct across a broad group can create harmful results. Paying attention to what we can cause in groups allows us to see every individual act through another lens. Given that these illegalities have been thought of in terms of their large-scale harms like those related to the ecosystem, we might ask the following: if we are disposed to accept the creation of cumulative illegalities to protect the environment, would it not be even more justified to accept them when what is at stake are harms to persons? Would it not be shocking that, adopting this perspective, we were to prohibit throwing a can in a river but it did not seem legitimate, in contrast, to do the same in a case like that of xenophobic expressions?

Certainly, the methods I have mentioned are unpopular and would be received with reticence on the part of a broad liberal sector. And the reason for this reticence is not so much in the idea of harm as in the value placed upon freedom of expression and association in a democratic society. Liberalism has traditionally authorized extraordinary protection for freedom of expression as a fundamental value and as a mechanism for assuring political participation, cultivating tolerance, and having greater access to the truth. But, does this principle deserve this much protection?

Few would deny that freedom of expression is a very valuable good in a democratic society, but it is not so clear that the liberal position should accord this aspect of individual liberty a value much higher than that of other aspects of individual liberty or that that of other basic principles. Sometimes, the strict safeguarding of this principle is a response to the fear of the consequences that could result from its restriction, for example, that the state might censor for its own benefit, quieting those who disagree with the party line. For many, according predominant value to the freedom of expression can keep this from happening. Nevertheless, since mechanisms for dealing with the arbitrary use of power or a dictatorship of the majority can be developed, this is not a solid argument for the preeminence of this standard.

Freedom of expression is one of the pillars sustaining the growth of a genuine liberal democracy, and that explains the attention that has been paid to it in this work. To become a free community of equals, we should guarantee that all individuals can be heard, that there will be no people that lack a voice. Respecting the right to express oneself is indispensable to secure the effective inclusion of all in the collective project. Now then, when a society, thanks to instruments like freedom of expression, reaches this quantitative level of participation, it also begins to be prepared for a qualitative jump-start in its conception of what a community demands of free and equal people. Once we have guaranteed that all can participate, we can change our focus to the question of the quality of this participation as a debate between people who deserve equal consideration and respect. From this new perspective, mere expression no longer appears so sacrosanct and it becomes legitimate to evaluate discourses based on their indirect results. Thus, in the same way that, following on Rawls, in a more egalitarian society more priority can be given to the first principle of justice, it would be reasonable to state that in a society in which all have a voice, it is legitimate to

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<sup>54</sup>Por ejemplo, Silva (1999, 108 y 105-113). En el contexto moral véanse Parfit (1984, 67-73), Scheffler (1995, 225 y 229), Fishkin (1982, 106-107, 127 y 148).

reconsider the role of freedom of expression. Some liberals, using different argumentative strategies, have followed this line and have accorded greater weight to the ideas of liberty and equality. Owen Fiss, for example, speaks of the silencing effect that expression can have and proposes the possibility that a state, still a friend of liberty, could limit some voices to protect the quality of others. From a perspective such as that one, it seems legitimate to broaden the framework of individual responsibility in contexts of environmental violence. Certainly, the price is not too high.<sup>55</sup>

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<sup>55</sup> Fiss (1996, 4-5; 1999, 11-14, 85-87 y 116-117).

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