

## SOCIAL AND POLITICAL PHILOSOPHY

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## THE PROBLEM OF CONSENT IN FEMINIST PRACTICAL ETHICS

### Abstract

The article analyzes the topical problem of consent in modern feminist theory as a way of achieving public consensus on the goals and forms of women's emancipation. The emancipation of women is one of the most important achievements of modern society and an ongoing process. Therefore, the issues that are being discussed within the framework of feminist ethics are appropriate. For example, the extent to which men who hold power and dominance for thousands of years can genuinely liberate women and share with them equal rights and opportunities. There is also an acute problem of the extent to which women themselves are willing to show solidarity and their consent on social and political issues. These issues and discussions by contemporary feminists, who deserve the attention of a wide range of experts in applied ethics, argumentation theory, social and political theory, are addressed in this study.

*Keywords:* feminism, applied ethics, consent, social contract, contractualism, morality and rationality.

### Introduction

The concept of free and informed consent is now better known in medical ethics. It is related to the need to obtain patients' consent in medical institutions to conduct various medical check-ups, procedures and surgical interventions, or as a legal procedure for granting the right of disposal, for example, of personal data. Nevertheless, the problem of consent that the famous American feminist Alison Jaggar addresses belongs to a very different sphere related to feminist practical ethics. This ethics is the basis for practical action aimed at protecting the rights and interests of women and a discussion of the consequences of political decisions, social programs or changes in legislation, which directly affect women's lives and their professional opportunities. The consent or dissent of women with the existing state of affairs and the decisions made should undoubtedly be taken into account by the authorities and legislators. In any case, the legal basis

for this in the form of the principle of equality of men and women, enshrined both in universal international legal acts and at the level of normative legal acts of domestic legislation adopted in recent decades by "civilized" countries, are available.<sup>1</sup> However, this is more often presupposed than it actually is. Jaggar (1993) points out the difficulty of reaching such a consent, joining the discussions on how to achieve a political and moral consensus that has been initiated by such prominent political and moral philosophers as J. Rawls, R. Dworkin, R. Nozick, B. Ackerman and J. Habermas (p. 73).

### Consent in Contractualism

In proposing that consent be taken seriously, Jaggar refers to the crucial notion of contractualism, which continues the development of social

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<sup>1</sup> See the UN Declaration on the Elimination of All Forms of Discrimination against Women, 1967, Articles 2, 14.

contract theory in modern political and moral philosophy. It is common knowledge that the social contract theory is one of the best known in European philosophy and refers to the two crucial philosophical concepts – “natural state” and “contract”. From the standpoint of this theory, the civilized state of humankind begins with the establishment of general principles that define relations between human beings. Unlike the natural state of “war of all against all”, civilization is based on people’s consent to submit to standard rules and laws. The actual existence of these rules and laws is beyond doubt, but the problem lies in the cause of their existence and the justification for their existence or justice. This problem is the cause of the controversy of modern moral theories, which were dominated by pragmatic and utilitarian concepts until the middle of the 20<sup>th</sup> century. These concepts justified the benefit of adhering to moral principles in order to maximize the satisfaction of the needs of the maximum number of people or, in other words, the public good. Depending on the conception of the nature of this good, these concepts existed as “perfectionism, hedonism or eudaimonism” (Rawls, 1971, p. 22). It is also worth noting that Kant already rejects utilitarian principles that define the maximization of pleasure and the minimization of dissatisfaction as the primary goal and content of the public good. Only the general and objective order of moral law embodies for Kant (1998) “the supreme idea of the public good” (p. 680).

In contrast to utilitarianism, contractualism, based on the principles of Kantian moral philosophy, considers the principle of “justice as fairness” as the foundation of social life, the latter being based on the ideas of correctness and initially accepted in the “original position”, but not related to the ideas of the good. Contractualism in modern moral philosophy relies on hypothetical consent, an abstract model allowing a kind of mental experiment that defines the necessary conditions for reaching consent. John Rawls, one of the most outstanding representatives of con-

tractualism in political philosophy, uses the notion of “original position” to justify such conditions. People can establish fair principles of co-existence based on rational notions of equal rights and opportunities. Rawls (1971) believes that “the desire to follow rules impartially and consistently, to treat similar cases similarly and to accept the consequences of the application of public norms is intimately connected with the desire, or at least the willingness, to recognize the rights and liberties of others and to share fairly in the benefits and burdens of social cooperation” (p. 52). However, from a theoretical and legal point of view, it cannot be reasonably stated that equality and justice are interdependent and strongly related categories. There can be no need for justice if everything is abundant or absolutely insufficient. In this regard, the idea of equality becomes meaningless. If one individual, for example, has a certain amount of wealth, then the others should have the same amount. Ultimately, those benefits that cannot be shared equally will have to be either excluded or special rules for the enjoyment of those benefits will have to be established, thus generating inequality. Thus, a right as one of the regulators of public relations, applying the same rules and granting equal rights to different individuals, only in relatively similar situations seems both fair and unfair in this sense (Tarusina & Isaeva, 2013, p. 6).

Decisions on universal principles are made by the people in accordance with the notions of mutual benefit and justice. And this is possible only if the general conditions are fully known, without coercion, and all citizens are recognized as equal and free. Since there is no equality in real life, Rawls introduces another abstract assumption about the possibility of making decisions, being behind “the veil of ignorance” about his own real social positions. As a result, his theory of justice makes too many abstract assumptions irrelevant to reality. The theory has therefore been soundly criticized for its largely metaphysical nature. So, for example, pointing out to Rawls’s claims, M. Dimitrova (Professor of Social Philosophy)

(2016) states: “Subjects choose their goals and viable projects monologically, rationally and autonomously by calculating their interests and controlling their claims in respect to claims by others by relying on the original agreement. Nevertheless, if the participant in this agreement is individualized before he/she enters into any relations, even before choosing his/her goals, they would be “no one” – a being that is beyond the particularity of the situation, man without qualities and authorization” (p. 230).

This means that formal hypothetical consent has an advantage over actual consent, which may not meet the criteria of rationality and voluntariness. However, as J. Habermas notes in discussing the grounds of moral judgment and moral action, the objectivity and impartiality of the assessment of another person’s action can block the moral sense that is always associated with personal involvement. Through personal participation, feelings, grievances, or gratitude for a just decision or act, or “feelings of guilt or duty” can only be experienced (Habermas, 2001, pp. 72-73).

The focus of feminist criticism of contractualism is somewhat different. Feminists expose this theory as based on a male understanding of justice and rationality. From Jaggard’s point of view, feminist ethics is an independent field of applied ethics, as it does not discuss women-specific issues but criticizes the men’s interpretation of ethical principles. This male approach leads to the neglect of women’s interests. Therefore, the purpose of feminist practical ethics is to discuss the position of women in society and demand that their interests be respected. The criticism of contractualism in feminism is precisely related to the male interpretation of moral subjectivity and the motivation of moral action, leading to an underestimation of the moral character of the interpretation itself. But Jaggard focuses only on one aspect of contractualism. It is the belief in the need for informed and voluntary consent as a condition of moral acceptability. She considers such consent to be an important principle in ensuring

the emancipation of women from authoritarian and social pressures. The free public agreement should ensure the impartiality and objectivity of moral norms. However, feminists criticize the very possibility of such a discussion, which inevitably depends on the cultural and ethnic characteristics of the situation. However, as Jaggard (1993) notes, contractualism can still overcome the difficulties of possible “moral scepticism” arising from the recognition of cultural relativism and offer a model of non-conventional morality that respects the interests and rights of women (pp. 71-72).

Analyzing the key benefit of contemporary contractualism, Jaggard (1993) notes: “Contemporary contractualism has developed the intuition in ways designed to guarantee that morality be impartial and objective, that it be public and consensual, and that moral obligations be assumed autonomously” (p. 72). Of course, the actual consent does not always meet the criteria of voluntariness and awareness. Real people in real society may be in a subordinate or privileged position, maybe under-educated and follow existing norms and traditions that are far from the ideals of justice but in keeping with relevant covert conventions. Therefore, criticism of the existing state of affairs, accepted by women who were discriminated against, constituted the first stage of feminism and was limited to exposing the various ways in which women were oppressed and deprived of their social, economic and political rights.

### The Concept of Gender and the Ideas of Feminism

The concept of gender emerges at this stage, revealing the hidden social mechanisms of imposing women gender roles and sexual stereotypes that support male dominance. The concept of gender was formulated based on the Marxist idea of false or ideological consciousness, psychoanalytic representations of unconscious motives and Foucault’s proposed notion of dis-

course exposing the powerful nature of scientific knowledge. All these hidden mechanisms for shaping perceptions and values make it difficult to speak of the voluntariness and rationality of existing conventions regarding the position of women in society. These revelations have led to the conclusion that universal and specific female interests differ from those of males. However, as Jaggar points out, it turns out that women are not “a monolithic social group”, and the generalizations made by the first generation of feminists are not in the interests of many local groups of women divided by cultural and ethnic stereotypes, economic situation and level of education. At the same time, the interests of a relatively small group of well-educated white middle-class women were declared to be the epitome of universal women's interests. Therefore, the second stage of feminist development took place in violent disputes over the universal women's interests. In these discussions, it became evident that achieving real agreement was very difficult even among women regarding their social justice. For example, arguments against the sexual exploitation of women in pornography and prostitution that seemed well-founded have not been accepted by many women. They considered their work in these areas to be a means of professional self-realization and economic independence. Furthermore, within feminism itself, there have been expressed positions questioning the value of the concept of justice for women.

So, for example, Carol Gilligan (1987), a famous American feminist and ethicist, argued that the universal theory of “moral development”, proposed by L. Kohlberg, is not universal per se and describes only “the moral development of males” who have “ethical notions of justice” because of their practical orientation towards competition and success (pp. 20-25). In her view, women do not possess such an ethic of justice, as they are more focused on building strong social relationships based on love and care. This means that the motives of men and women are quite different. The morality of justice refers to rights

and honesty, while “the morality of caring”, by contrast, refers to responsibility and the maintaining of unique relationships. In its turn, this means that justice is focused on universality and impartiality, while care is focused on maintaining a network of stable relationships. This position could not but have been challenged primarily by other feminists. They saw it as an attempt to legitimize the existing dominance of men in need of women's care as well as an equally dangerous attempt to discredit the ethical principle of justice, without which morality is not possible at all. However, this position opens up a very important aspect of reaching consent, often ignored in feminism. It is about family relationships that may not conform to existing norms and conventions, and men and women can act more freely, based on the situation and their own interests.

Modern philosophical notions of man are highly controversial and diverse, and this alone constitutes a serious obstacle to reaching hypothetical consent. After all, the content of moral theory depends on what ideas about rationality lie at the core of it. Is reason an autonomous legislator with a universal character or merely a tool for satisfying the selfish interests of an individual, socially and culturally determined? Different answers to this question suggest different moral concepts, which may be either objective, subjective, deontological or pragmatic.

Equally complex and ambiguous are the concepts of needs and interests, which are interpreted in very different ways in Marxism, Freudism or phenomenology, and other social sciences. In addition to this, the perception of interests and needs is still politically engaged and subject to political debates. But that does not mean that “idealized consent” is more vulnerable to criticism than any other philosophical concept. However, this does not prevent it from being used by critics of feminism of an unjust society or modeling of moral principles. It is different from the contractualists who did not consider it possible to use hypothetical consent in practice. They insist-

ed on its exclusively theoretical status, precisely as the basis for the construction of “basic institutions of society” by a small number of specialists, but not in a situation of wide public discussion.

Nevertheless, the practical significance of primary institutional arrangements that ensure equal rights and opportunities for all members of society was not questioned by them. Contractualists believed that only by enabling citizens to take control of themselves and their affairs can they be expected to play an active part in joint work. Thus, contractualism offers the idea of society, which “is seen as a fair system of cooperation among free and equal citizens” and can be implemented in different ways and in different real circumstances (Rawls, 1971, pp. 15-16).

### Justice and Solidarity

As Habermas (1994) points out, “justice and solidarity are two sides of the same coin”, ensuring the functioning of a sustainable communicative community based on “an individualistic understanding of equality and a network structure of reciprocal recognition” (p. 154). The intersubjective agreement cannot be achieved by coercion, suggestion or violence, and therefore each participant in the dialogue must take into account and respect the other person’s position. The values of tolerance in modern society limit the universality of moral principles by allowing different views and values to coexist. Therefore, reaching a consensus can no longer be considered even theoretically feasible. Nevertheless, that does not mean that morality has no place in the modern world. It just needs to regulate today communication practices and social interactions, preventing conflicts and violence by transforming individual positions into a joint “*We*” perspective (MacIntyre, 1988, pp. 169-174).

As Jagger (1993) notes, for feminist practical ethics that focuses precisely on radical changes in the “basic social institutions”, the use of the hypothetical consent model is perfectly accepta-

ble and justified (pp. 77-78). After all, the practical problem of changing attitudes towards women is directly related to existing institutions. “For instance, the issue of abortion raises questions about the nature and extent of privacy rights and civil liberties; the issue of comparable worth raises deep questions about appropriate criteria of just distribution; the issues of childcare or domestic partnership raise questions about the institution of the family; the issue of pornography raises further questions about civil liberties; and so on” (Jagger, 1993, p. 78). However, the greatest obstacle to the use of hypothetical consent is the persistence of male dominance in a far from just society, which is not conducive for a free and fair discussion of the problems. Therefore, the reasoning of an “idealized hypothetical consent” can only demonstrate the depth of the gap between reality and the ideal model of society.

Feminists realize that they are not dealing with perfectly rational and informed agents but with real people who are the bearers of ideologically distorted minds and different gender, racial and social stereotypes. This, in turn, means that in an actual social situation, people are far from possessing equal knowledge and opportunities, rights and human dignity and can abuse power and be cruel and unjust. Therefore, in Jagger’s view, feminist ethics must combine pragmatic and utopian approaches ensuring a sober attitude to reality and a desire for a better future. The utopian approach is linked to socialist ideas of equal rights and opportunities for all, regardless of gender, race and class. But to realize this dream, the moral argument of the attractiveness of an ideal society is not enough. The motivations, interests and needs of real people must also be understood and taken into account. This is the most basic and principled restriction regarding the application of hypothetical consent in practical ethics, as it is impossible to be absolutely sure of adequate understanding among real people who are also inevitably influenced by public opinion and the media. But if it is impossible to live in society and be free from it, then where

does Jaggar get the confidence in the possibility of establishing impartial and universal moral principles? Is it not the “will to justice” that she proclaims another version of the “will to power”?

At the same time, the irresistible gap between actual and hypothetical consent must not be overlooked. Hypothetical consent is morally invalid because it cannot be empirically proven to be advantageous. Moreover, in the absence of an interlocutor, it makes no sense at all. Therefore, Jaggar encourages feminists to achieve moral consensus in real life while respecting the principles of the social contract. Although, due to divergent interests and political and social divisions, such a consensus is virtually unattainable throughout society, while it might be possible in small groups of people with shared interests. It is essential to understand that moral dialogue is possible only if the communicant’s positions are equal. The virtual impossibility of such equality help theorists to conclude that such a moral dialogue (Ackerman) is unnecessary and even dangerous or difficult to implement (Habermas). Habermas, for example, considers an “ideal speech situation” which is almost impossible to encounter or create in reality, but he nevertheless recommends seeking dialogue, outside of which reaching consensus is difficult to imagine.

According to Jaggar (1993), only American feminist Marilyn Friedman insists on the need for actual dialogue to achieve moral impartiality and objectivity without denying the difficulty of its practical implementation (p. 83). However, achieving a real consensus is also a dream, but one, in which one must participate and feel human and circumstances resistance as opposed to abstract hypothetical models that risk of being dreams forever. The very preparation of the terms for such a dialogue, which implies a reduction in inequality, brings us closer to the implementation of actual consent. There is no perfect rational method for answering the question: “*What should I do?*”. Therefore, it is necessary to listen respectfully to every person who lives

next to us and to understand that there are neither completely free and rational people nor completely dependent and unable to agree. Therefore, it is necessary to move away from a rigid division of people and capabilities and seek the basis of a real rather than a hypothetical consensus, guided by practical and political wisdom as well as by the will to respect and accommodate each and every opinion.

Lastly, it should be borne in mind that ethical requirements must first and foremost be imposed on oneself, checking one’s own beliefs and rejecting prejudices and biases. Actual consent is almost as unattainable as hypothetical, but, unlike the latter, it shows the real obstacles to its implementation and allows for practical solutions to existing real rather than “fictional” problems. Social inequality is the main obstacle to achieving real moral consensus. Therefore, Jaggar (1993) puts forward a rather controversial and ambiguous thesis that “moral progress is inseparable from political progress and feminist ethics from feminist politics” (p. 84). This thesis contains a rather obvious danger of political voluntarism, which can justify any means to achieve often dubious goals.

### Feminism and Applied Ethics

The key feature of modern feminism and applied ethics is the incorporation of theoretical principles into the structure of practical action. Thus, according to Habermas, the justification of norms is “essentially a communicative task”, and the pragmatic meaning of a norm is not related to its significance. It refers not to the truth but to impartiality, which shapes the will, not the judgment (Habermas, 2001, p. 110).

An unexpected but obvious parallel to the problem of moral dialogue can be seen in the communication between science and society that a contemporary German philosopher Mathias Kettner (1993), is dwelling on (pp. 39-42). The problems of achieving consensus on a wide range of issues related to scientific research,



technological systems, diagnoses and treatment often directly affect women. Women are more sensitive and receptive to environmental and demographic concerns and are also more considerate in contraception, cancer screening, genetic disorders and many other issues related to maternity and parenting methods.

One of the most notable contemporary problems is that of nuclear energy, which has become a subject of active discussion in Europe since the Chernobyl disaster. It seems that this issue can be approached from a practical ethical perspective since it implies an obvious moral dilemma affecting women. On the one hand, nuclear power provides cheap electricity to the household, which greatly facilitates domestic work through various electrical devices and significantly contributes to the technological emancipation of women, exempted from work as launderers, cleaners, dishwashers, etc. On the other hand, the same energy is a source of environmental risk of radioactive contamination in the event of a possible accident or waste disposal. In this case, the reproductive function of women and men and children's health are, particularly at risk. Such a dilemma seems to prevent a socially acceptable decision on the future of nuclear power from being made. This is an example of the difficulty of reaching voluntary informed consent, both hypothetical and actual. It is also worth noting that the gradual shift away from nuclear power is not so much a result of protests by environmental organizations and public discussion of its dangers and benefits as of the technological development of alternative energy, which is becoming increasingly important in the energy mix in developed countries. However, it is possible that the development of alternative energy itself has been the result of discussions and wide dissemination of information on nuclear energy issues.

In any case, the problems of applied ethics are indeed quite different from classical problems of moral philosophy. While moral philosophy is concerned with the search for a moral judgement that claims universality, applied ethics has to be

limited to solving the local problems of particular groups of people who differ in their interests and needs. Therefore, the position of one of the contemporary researchers in applied ethics, Roger Wertheimer (1993), who calls upon the applied ethicists to abandon unrealistic claims to the moral truth and to maintain healthy "Socratic scepticism" towards themselves and their colleagues, deserves respect and attention (pp. 159-161). According to Wertheimer, "Socratic scepticism" is everyone's concern and implies the need to question their most steadfast beliefs and convictions. This scepticism must be embraced by all those who seek knowledge, and this is primarily true of notions of value and justice. It is precisely this healthy scepticism that is lacking in Jaggar's position. She is too much obsessed with the idea of social justice without noticing the complexity of this social construct, which is far from being impartial and objective with regard to both women and men. Therefore, the problem of discrimination cannot be solved only through criticism of gender, rather concealing the depth of the problem and setting false goals. The ideas of contractualism have certainly not exhausted their theoretical and practical potential. They need serious correction in the light of advances in social phenomenology, critical theory, and communication studies.

### Conclusion

As the analysis of feminist practical ethics demonstrates, it is necessary to prioritise reaching actual consent through a moral dialogue of all concerned in any problematic situation of dissent, dispute or conflict. However, reaching such consent is a very complex problem, the solution of which requires the joint work of many specialists and researchers. Although feminist practical ethics has described this problem very clearly and distinctly, it is still unable to solve it, being overly critical of gender and failing to see the deeper foundations of social discrimination. Perhaps actual rather than hypothetical consent can-



not be reached without a more thorough discursive analysis of the current social situation as a whole, showing the primarily secondary nature of gender issues.

Pluralism of opinion and assessment is an inescapable reality of modern social life and must be considered in solving ethical issues. In such a case, the actual consent reached in the public dialogue cannot claim the general validity of the moral principle and is situational, open to further discussion and correction. This means that the issues raised within the framework of feminist practical ethics need a deeper theoretical study to create a broader picture of the world, in which there are many more actors than oppressed women and dominant men. The research shows convincingly that achieving public consent requires not only appropriate political changes aimed at dismantling the system of discrimination but, above all, a scientific consensus about human nature and social relations. Otherwise, it will be impossible to avoid the political bias of the proposed solutions, no matter what fine slogans they are offered under.

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