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*Editors*

**Human Rights, Rule of Law and the Contemporary  
Social Challenges in Complex Societies**  
*Proceedings of the XXVI World Congress of Philosophy  
of Law and Social Philosophy of the Internationale  
Vereinigung für Rechts- und Sozialphilosophie*

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# Universality, ethical community, and human rights in Lima Vaz

Laura Souza Lima e Brito<sup>1</sup>

*Abstract: This paper addresses the opposition between nomothetic universality and hypothetic universality for Henrique Cláudio de Lima Vaz as a core matter for the feasibility and establishment of a universal ethical community and, consequently, for defining and ensuring universal human rights.*

*Keywords: Universality. Ethical community. Human rights. Henrique Cláudio de Lima Vaz.*

## 1. Initial remarks

This paper has been presented to the Law and Ethics working group at the XXVI World Congress of Philosophy of Law and Social Philosophy, which took place at the Federal University of Minas Gerais. It has the purpose of extracting from the body of work of Henrique Cláudio de Lima Vaz, an important Brazilian philosopher and formulator of a concrete ethical system, what the understanding of the relation between ethics and law may contribute to comprehend the possibility of a universal ethical community today.

This work approaches the relation between ethical community and human rights according to Lima Vaz's conceptions. In other terms, the question to which we seek an answer is: which are to Lima Vaz the present obstacles for the consolidation of a universal ethical community and for the realization of human rights as universal rights?

The search for an answer to this question is theoretical and will take place in Henrique Cláudio de Lima Vaz's work, as well as in works of his commentators, which have already produced in Brazil a vast repertoire on ethics according to Vaz's view

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Therefore, the intent here is to verify, through the prism of ethics, the requirements for the formation of a universal ethical community, from which universal rights would emerge and, by confirmation of this possibility, to also verify the reasons why this community and these rights are not consolidated in the world today.

The relevance of this topic is placed before the actual existence, today, of a world community, in technical and economic terms. In light of this fact, more than ever it is necessary to expand such technical universality to an ethical and legal universality, which is only possible, according to Lima Vaz, by consolidating a universal ethical community, built on the acknowledgment of others and not on the needs of an individual.

## **2. Contextualization of Henrique Cláudio de Lima Vaz's ethical and legal thinking in his body of work**

To face legal issues in Henrique Cláudio de Lima Vaz's thinking is not possible if they are not understood as ethical issues – especially because there lies the focal point of Vaz's position: law cannot be dissociated from ethics.

Lima Vaz built a dense and consistent ethical system whose structure is based on a dialectic of three stages: abstract universality, particularity and singularity, considering that the second stage denies the first and the third one preserves the previous, elevating them to the status of a concrete universality. This is how Lima Vaz understands and explains the world of *nomos*: man as a person, the act to an end and ethics that permeates the human world.

Through his system, it is possible to understand that modern individualism, based in subjectivism, remains stuck at the moment of particularity, denying the universality of the search of good by mankind. It is this obstacle that the proposal of Lima Vaz's ethical system tries to overcome by returning to metaphysics. As noted Maria Celeste de Sousa:

Claudio Henrique de Lima Vaz is a systematic and dialectical philosopher. His anthropological thinking and ethics lies within the ratio that founds human being and acting in a critical attitude to the primacy of modern subjectivity, and so he is positioned in fa-

vor of returning to metaphysics as prime philosophy.<sup>2</sup> (2010, p. 19)

In context of his ethical system, Lima Vaz will denounce how modernity led to dissociation of law and ethics, due to the abandonment of ethical action that leads to the common good, for the sake of acting for maximum utility. And within this ethical system, the problem of ethical community today excels for Lima Vaz because “he cares about men in their historical vicissitudes, especially with today’s social status, its spiritual crisis, solipsism and ethical nihilism extended to the field of ideas and social practices”<sup>3</sup>(SOUSA, 2010, p. 19).

### 3. The matter of the ethical community

In order to discuss the matter of the ethical community to Lima Vaz, we must understand what the ethical community means within Vaz’s system. Man, as an intelligent and free being, behaves in view of an end, namely, the realization of good. Therefore, the question that guides the behavior of the individual should be: what should I do? How should we live?

This way, a man reveals himself as an ethical individual, and may only remain so as long as he is aware of the ethical knowledge that surrounds him and as a participant in an ethical community and, ultimately, the universal ethical community. In this sense, the universal ethical community is the interaction of all men in pursuit of the common good for humanity.

In antiquity, homologically to the cosmological order that governed the natural world, there was a normative order managing the human world. Thus, there was a determination of the teleological character of ethical action. With the advent of modernity, untying normative order from natural order, by technical reason, caused a rupture within the idea that humanity seeks good to forge the hypothesis that humanity seeks greater utility in its actions. It leads to the crisis denounced by Henrique

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<sup>2</sup> In the original: “Henrique Cláudio de Lima Vaz é um filósofo sistemático e dialético. Seu pensamento antropológico e ética situa-se no âmbito do logos que fundamenta o ser e o agir humanos, em uma atitude crítica à primazia da subjetividade moderna, logo ele posiciona-se favoravelmente ao retorno da metafísica, enquanto filosofia primeira.”

<sup>3</sup> In the original: “ele preocupa-se com o homem em suas vicissitudes históricas, notadamente com o modelo social hodierno, sua crise espiritual, o solipsismo e o niilismo ético que se estendem ao campo das idéias e das práticas sociais”

Cláudio de Lima Vaz:

There it is, probably, where lies the core of the crisis in our civilization: its working reason expanded in several directions - scientific, technical, organizational, political, following the expansion of its historical and cultural space; in the field of *ethos*, however, it cannot create a new paradigm of ethical rationality or universal ethics for a universal civilization.<sup>4</sup> (2002, p. 168)

Classical thinking corresponded to a nomothetic universality, which is configured “as from the concept of a universal order to which a prescriptive character of law is assigned”<sup>5</sup> (LIMA VAZ, 2002, p. 217). This in turn, modern thinking has forged a hypothetical universality grounded in the hypothesis of a primitive state of nature, from which man escapes by alienation of his freedom, as Mac Dowell explains:

The individual, therefore, waives part of his original freedom due to his own interests, favored in a greater scale by the limitation of everyone’s freedom, in social life, than by self-isolation or conflict state, the ‘state of nature’. (...) the decision to join the social contract results from calculation of advantages it brings to the individual.<sup>6</sup> (2007, p. 242).

In the words of Rubens Godoy Sampaio:

The universality that determined the horizon of antiquity had as foundation a world order that was supposed to be manifested and in which the nomos or the laws of the city were the way of life of men, who reflected the order of the cosmos as contemplated by

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<sup>4</sup> In the original: “Eis, pois, onde se situa, provavelmente, o cerne da crise da nossa civilização: a Razão nela operante expandiu-se em várias direções - científica, técnica, organizacional, política - acompanhando a dilatação de seu espaço histórico-cultural; no espaço do *ethos*, porém, ela não consegue criar um novo paradigma de racionalidade ética ou uma Ética universal para uma civilização universal.”

<sup>5</sup> In the original: “a partir do conceito de uma ordem universal à qual se atribui o caráter prescritivo de lei”

<sup>6</sup> In the original: “O indivíduo renuncia, portanto, a parte de sua liberdade original em função de seu próprio interesse, mais favorecido pela limitação da liberdade de todos, na convivência social, do que pela situação de isolamento ou conflito própria do ‘estado de natureza’. (...) a decisão de aderir ao pacto social é resultado de um cálculo de vantagens que dele advém para o indivíduo.”

reason. In hypothetical and deductive universality, the foundation is hidden and needs an explanation coming from a former hypothesis, not empirically verified and which needs to be deductively supported by its consequences.<sup>7</sup> (2006, p. 93).

The shift in ethical paradigm, as presented by Lima Vaz, occurred in track of scientific thinking paradigm shift:

The phenomenon that forged the epistemological assumptions for the overcome of classical horizon (nomothetic universality) to the horizon of modernity (hypothetical and deductive universality) was the scientific revolution, also responsible for the mathematization of physics and mathematizing intention of reality understanding. One of the most significant effects of the Cultural Revolution was the arising of technique as determining factor for the approach of nature.<sup>8</sup> (SAMPALHO, 2006, p. 92).

The domination of nature by man with modern technical development reinforces the culture of utility, and it is based on the isolated individual. It is not a critique of the advances brought by modernity, but rather to point out serious ethical consequences that emerge on track of technological advances.

The paradigm of calculation of benefits favors subjectivity in its particular moment, discrediting the moment of intersubjectivity, in which an individual acknowledges himself in the other. It is this acknowledgment that guides ethical action and is rather necessary for the pursuit of the common good in the ethical community.

The problem of the ethical community, under the hypothetical

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<sup>7</sup> In the original: “A universalidade que determinava o horizonte da Antiguidade tinha como fundamento uma ordem do mundo que se supunha manifesta e na qual o nómos ou a lei da cidade era o modo de vida do homem que refletia a ordem do cosmos contemplada pela razão. Na universalidade hipotético-dedutiva, o fundamento se encontra oculto e precisa de uma explicação oriunda de uma primeira hipótese, não verificada empiricamente, que tem a necessidade de ser dedutivamente corroborada pelas suas conseqüências.”

<sup>8</sup> In the original: “O fenômeno que forjou os pressupostos epistemológicos da passagem do horizonte clássico (universalidade nomotética) para o horizonte da modernidade (universalidade hipotético-dedutiva) foi a revolução científica, também responsável pela matematização da física e pela pretensão matematizante de compreensão da realidade. Um dos efeitos mais significativos dessa revolução cultural foi a emergência da técnica como fator determinante de abordagem da natureza.”

universality paradigm, is the superiority of individual interests over the common interest (common good). The solution is to overcome the subjectivist rationality that supports modern society by rescuing communal life.

The goal of Lima Vaz with his philosophical proposal “is to raise society to an ethical level, as a community of free men, whose intersubjective relations are governed under the right of each one having his personal dignity recognized and being part of the rational consensus around the common good.”<sup>9</sup> (SOUSA, 2010, p. 20/21)

In due course, the realization of human rights is essential to achieving the scenario designed by Lima Vaz and, as he said, it is precisely the construction of society on a hypothetical universality that prevents the realization of these universal rights.

#### 4. Ethical community and universal human rights

Vaz’s proposal for ethics has direct repercussions in the field of law and, in a special way, in regards to the possibility of conception and consolidation of human rights as universal rights. That because law is an ethical phenomenon par excellence, since it is practical reason that should guide the formulation of legal rules.

If “the manifestation of ethical life is objectively universal, since all cultures seek good, even if it is not predetermined as good”<sup>10</sup> (BRITO, 2013, p. 104); it is possible, homologously, envision universal rights which are not addressed to cultural particularities, but which precisely guarantee freedom and communal living for the sake of common good.

But if the ethical phenomenon is universal, what explains the ineffectiveness of protection of human rights at the global scale? Lima Vaz attaches to the consolidation of the fundamentals of ethical and political life in the hypothetical universality the deep paradox between the overwhelming attempt to define universal human rights and the inability to “bring down such rights from the dead and abstract plan of formalism and bring them to a concrete realization in social practices and institu-

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<sup>9</sup> In the original: “é elevar a sociedade ao plano ético, como uma comunidade de homens livres, cuja relação intersubjetiva seja regida segundo o direito de cada um ter a sua dignidade pessoal reconhecida e de ser participe do consenso racional em torno do bem comum.”

<sup>10</sup> In the original: “a manifestação da vida ética é objetivamente universal, vez que todas as culturas buscam o bem, ainda que não seja um bem previamente determinado”



tions”<sup>11</sup> (LIMA VAZ, 2002, p. 237). This because the hypothesis in question is formulated exclusively for the satisfaction of insatiable interests of the individual.

The consolidation of universal human rights does not meet the criteria of utility, but, in fact, to a pretense of equality, in which all human beings share freedom, acknowledge themselves in each other and participate in the construction of the ethical knowledge for humanity.

In effect, for society to be human, it must transcend the individual interests and create space for men to be consensually equal. This level of sociability is thus constructed as a relation of differentiated acknowledgment, which is not limited to equally satisfying individual needs, but for equality that dialectically supersedes these differences, raising individuals to the political sphere of universal acknowledgment, or of living together with the purpose of universal good.<sup>12</sup> (SOUSA, 2010, p. 31)

That’s why, in Vaz’s perspective, there is an implication between nomothetic universality and the universality of human rights. In this sense, the author underlines that:

No universal ethics will be possible without that the proper interpersonal relations, especially those that are established in a mutual order between rights and duties, which are interwoven among individuals of an alleged universal civilization and which derive for groups and subgroups within that civilization, are recognized and experienced as ethical relations, that means, objectively legitimized and publicly in force as expressions of an ethical community.<sup>13</sup> (2002, p. 170)

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<sup>11</sup> In the original: “fazer descer do plano de um formalismo abstrato e inoperante esses direitos e levá-los a uma efetivação concreta nas instituições e práticas sociais”

<sup>12</sup> In the original: “Com efeito, a sociedade para ser humana tem que transcender os interesses particulares e criar espaços para que os homens sejam consensualmente iguais. Esse nível de sociabilidade se constrói, portanto, como uma relação diferenciada do reconhecimento, que não se limita à igualdade da satisfação das necessidades individuais, mas pela igualdade que suprassume dialeticamente essas diferenças, elevando os indivíduos à esfera propriamente política do reconhecimento universal, ou da convivência em vista do bem universal.”

<sup>13</sup> In the original: “Nenhuma Ética universal será possível sem que as relações propriamente intersubjetivas, sobretudo aquelas que se estabelecem na ordem da reciprocidade entre direitos e deveres, e que se entretecem entre os indivíduos de uma pretensa civi-

To summarize, in Lima Vaz, the consolidation of a universal ethical community, grounded in intersubjective ethical act, which allows equality and acknowledgment among individuals, and aiming the achievement of the common good of humanity is the path to the realization of universal human rights.

## 5. Final remarks

We sought to understand in this paper what are, within the work of Henrique Claudio de Lima Vaz, the barriers today to the consolidation of a universal ethical community and the realization of human rights as universal rights.

It has been shown that the abandonment of a universal order to which a prescriptive law character is assigned (nomothetic universality), and its replacement by a hypothesis of social constitution grounded in a calculation of individual advantage (hypothetical-deductive universality) is to Lima Vaz the reason for the exaggerated individualism of our time, which prevents the acknowledgment of the other and the formation of a true universal ethical community.

To overcome the impasse created by the universal presence of the ethical phenomenon and the ineffectiveness of human rights, with the consolidation of a universal ethical community, in which universal human rights are actually guaranteed, Lima Vaz relies in the “assumption of a constitutive relation of the human being to a rational instance, which is in itself transhistorical, but normative throughout historical action: the instance of a transcendent good.”<sup>14</sup> (2004, p. 241).

## References

BRITO, Laura Souza Lima. **Liberdade e direitos humanos: fundamentação jusfilosófica de sua universalidade**. São Paulo: Saraiva, 2013.

LIMA VAZ, Henrique Cláudio de. **Escritos de filosofia V: introdução à ética filosófica 2**. 2. ed. São Paulo: Loyola, 2004.

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lização universal, deles derivando para grupos e subgrupos no seio dessa civilização, sejam reconhecidas e vividas como relações éticas, vem a ser, legitimadas objetivamente e vigentes publicamente como expressões de uma comunidade ética.”

<sup>14</sup> In the original: “pressuposição de uma relação constitutiva do ser humano a uma instância racional, em si mesma trans-histórica, mas normativa de todo agir histórico: a instância de um Bem transcendente.”

\_\_\_\_\_. Ética e direito. Organização e introdução de Cláudia Toledo e Luiz Moreira. São Paulo: Edições Loyola, 2002.

MAC DOWELL, João Augusto. Ética e direito no pensamento de Henrique de Lima Vaz. *In: Revista Brasileira de Direito Constitucional*, nº 9 (jan/jun 2007): 237-273.

SAMPAIO, Rubens Godoy. **Metafísica e modernidade**: método e estrutura, temas e sistema em Henrique Cláudio de Lima Vaz. São Paulo: Loyola, 2006.

SOUSA, Maria Celeste de. O conceito de comunidade segundo Lima Vaz. *In: Theoria Revista Eletrônica de Filosofia*, nº 5 (2010): 17-33.