

# LIMITS IN THE THEORY OF POLITICAL NEUTRALITY

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## Introduction

Liberal neutrality is one of the main features emphasised by contemporary liberal political theory. Neutrality takes both the form of a prescription and of an ideal in this case, representing a practice as well as an end still to be achieved, by its very limiting nature. Due to the restrictions that constitute it, neutrality is constantly limiting the political prescription for the social array, as well as continuously limiting itself from falling beneath a certain standard of impartiality. Neutrality is a political view stating that policies enacted officially through the state apparatus ought not to reward in particular, or penalize<sup>1</sup>, in this respect, any conception of the good.

The classic neutral point of view requires not as much a neutral instance but a neutral position, locus, from which neutrality is not achieved by filters and restrictions, but it is found embodied in the very characteristics of the position held. In this view, the expression cannot be otherwise than neutral, for it contains no bias in what regards the possibility of taking sides. Neutrality here is a practical limit, a condition that is assured through inherent contextual traits.

However, contemporary political debate, utterly suspicious about all positions claiming neutrality, shifts its attributes to those of a discourse. Neutrality is no more the attribute of a space, but the attribute of a discourse. The discursive nature of the political concept presupposes an instance (prone to neutrality) as a means of expression, but also extends the possibility of dynamics within the conceptual sphere. By shifting neutrality's attributes from those of a delimited locus, of a space, a point

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<sup>1</sup> Will Kymlicka, "Liberal Individualism and Liberal Neutrality", in *Ethics*, 1973, vol. 99, no. 4, Jul 1989, p. 1

of view, towards those of a discursive instance, the theory aims at safeguarding an ideal, whose possibility of can no longer be tied to any fixed context, for any fixed context is biased as a source. Therefore, neutrality becomes fluid, transferable, and dynamic; exposed to changes and flexibility, acting and reacting upon all received influences, and faces a continuous development and process of perfecting as an ideal. In this sense, neutrality is a suspended construction, aiming at detaching from all contexts and accumulating its substance without the benefit of a sole source of interpretation, but to a sole source of expression. Contemporary neutrality is an accumulation of dispersed interpretation (plurality, demand), levelled (through balance and consensus) and expressed by means of state action.

The force that stands behind this procedure and the drive that makes it possible it is first what Rawls calls a moral intuition, or the existing premises of a minimal common moral language; second, the preset of a common goal in order to achieve a “well-ordered society” in which neutrality plays an essential role of keeping the balance and sustaining a common, publicly recognizable pattern of functioning.

### ***Dimensions of neutrality***

The concept of neutrality is crafted through restriction and demand. According to these two dimensions it can be said that the concept has both an active and a passive appliance. In one way, the neutral instance (the state) is bound to act as not to favour any comprehensive conception within society, or so that its actions hold equal effects to all of them. In another view, the state must restrict from helping or allowing

judgements of worth in what regards conceptions of the good to take the course of action<sup>2</sup>.

The classical dichotomy that the literature advances is that between justificatory and consequential neutrality<sup>3</sup>. The two accounts of neutrality are theorized in relation to the concept's appliance and the point of clash with the social array. Whether at this point neutrality has already been configured, as a prospectus, in advance, or neutrality is set as the end of a policy enacted, ascribes the distinctiveness between these two accounts. The difference between the two accounts can also be interpreted as an application of a relation of equality: in this case the state's concern is equal towards all conceptions of the good (*justificatory*) or it's concern is rendering an equal outcome for all of them, case in which preferential treatment may exist towards the disadvantaged ones (*consequential* neutrality; Rawls' Difference Principle<sup>4</sup>). The accounts clash with each-other, in the sense that justificatory neutrality does not necessary hold results satisfying the consequential account, and the satisfaction of this latter account most usually implies denying the first one, theorized as an 'equal concern'. However, due to the fact that justificatory neutrality is of a more abstract nature, it can hold different interpretations, being more easily satisfiable, and at the same time, considered more crucial, especially due to its labelling as a principle. Consequential neutrality is more concerned with the mode of application of a principle than the principle itself.

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<sup>2</sup> "Neutrality is concerned only with the degree to which parties are helped or hindered. It is silent concerning acts which neither help, nor hinder."

Joseph Raz, *The Morality of Freedom*, Clarendon Press, Oxford 1986, p.120

<sup>3</sup>These labels are given by Kymlicka, while reviewing neutrality accounts in Rawls' and Raz's theory. They are given in order to structure a defence of Rawlsian neutrality as *justificatory neutrality*, thus escaping the objections brought by the breaches with *consequential neutrality* made in the Rawlsian account.

Kymlicka, p. 884

<sup>4</sup> John Rawls, *A Theory of Justice*, Harvard University Press, Cambridge, Massachusetts 1999, pp. 52-8

Besides the dichotomy between *justificatory* and *consequential* neutrality, Rawls adds one more account in order to characterize the liberal conception: *procedural* neutrality<sup>5</sup>. This type of neutrality encompasses all concerns regarding the claim for neutral practices, holding a very close relation to impartiality. Procedural neutrality, departing from any particular context and being a universal applicable formula (by its very definition as ‘procedural’) has no concern towards particularity. In this view, procedural neutrality could be the first account to be accused of difference blindness. The impartiality is assured in this account by an instrumental value of neutrality. Neutrality of procedure is a political instrument, detached from particular contexts, which it cuts through without any considerations or judgements of worth. The ‘procedural’ attribute makes this type of neutrality also easily subscribable (see Rawls, inside the pol conception) to any preset principles. According to this feature, procedural neutrality can be interpreted as a mode of applying any given set of principles; it can easily connect to a framework already effected, for it only regards the enactment, the procedure, the appliance itself.

## ***Research Plan***

The thesis shall follow a parallel structure between Rawls’ theoretical accounts of neutrality (together with all implications deriving from his theorizing of *Justice as Fairness*) and Charles Taylor’s *Politics of Recognition*. I have chosen this structure in order to be able to cover extensively the neutrality debate. My aim was to include Taylor’s claim for recognition, since, I believe, though the theory is rendered controversial, as shall be presented later on in my thesis, the demand for recognition is

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<sup>5</sup> John Rawls, “The Priority of Right and Ideas of the Good”, in *Philosophy and Public Affairs*, Vol. 17, No. 4, Autumn 1988, pp. 260-1

the point of breach in the theory of neutrality. Taylor's formulation may not be considered a full, valid claim but it certainly pin-points crucial aspects that the theory of liberal neutrality must seek to absorb in order to be able to sustain an ideal.

The links between the two lines followed come together once Habermas and Kymlicka are searching for solution out of what seems like a crisis faced by liberal neutrality. They represent theoretical knots between Rawls and Taylor, commenting from a point of view that aims at maintaining the neutral ideal, while trying to level as well the claims for recognition. Both interpretations, in my opinion, can be certified as filtered through the lenses of the Rawlsian account of consequential neutrality.

It can be considered that Habermas answers a question that Kymlicka still leaves open, in what regards the faith of competing conceptions of the good within a liberal society; however, Kymlicka has a deeper insight into the concept of autonomy, considering consequential neutrality as an account of instrumental value for free exercise of individual choice.

## Chapter I: Structuring/ Explanatory Chapter; Critique Review

### ***Criticized Aspects in the Theory of Political Neutrality (John Rawls)***

#### **Questioning the Possibility of an Unencumbered Self (Communitarian Critique)**

In what regards a conceptual inter-dependence between the ideal of neutrality and the possibility/validity of an unencumbered version of the self, I shall take Michael Sandel's critique of Rawls as an illustrative account, point which I will develop later on in my paper.

Michael Sandel criticizes the neutrality account theorized by Rawls, considering that the premises used in crafting this particular version of neutrality are false, and their use might lead to crisis in democratic practice, which Sandel associates with the problems that the American democracy is facing<sup>6</sup>. Sandel's understanding of Rawls is very structured and holds as a departure point the presupposition of an unencumbered self, whom is used as a source for a neutral discourse. Rawls' setting of unencumbered selves to negotiate in the Original Position is questioned from a realistic point of view. Whether such selves can really be claimed as a valid premise or whether a discourse departing from these instances could sustain a later practice of neutrality.

From the viewpoint of justice, the fairness of the setting is also questioned: does Rawls operate an improbable rupture in the Original Position by setting apart the

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<sup>6</sup> Michael Sandel, *Democracy's Discontent: America in Search of a Public Philosophy*, The Belknap Press of Harvard University Press, Cambridge, Massachusetts 1996, pp. 4-7



selves from character traits which are in effect indispensable, constitutive<sup>7</sup>? If it were so, then Rawls holds a definite bias to start with, setting out for a goal favouring justice as fairness but departing with a great injustice, an invalid claim.

There are two ways in which counter-arguments can be brought to Sandel's critique: the first is proving that the unencumbered self does not presuppose any separation from constitutive character traits, and, consequently, that the scheme enacted is valid in presupposing a version of the self as such; the second is denying the unencumbered self as a full source of neutrality, denying the weight it holds in Rawls' particular theoretical framing or denying Sandel's interpretation of it as such<sup>8</sup>.

### The Individualist Objection

Will Kymlicka groups this type of critique, brought also to Rawls' theory, into two sub-labels: *possessive individualism*<sup>9</sup> and *atomistic individualism*<sup>10</sup>. The first sub-label is concerned with the way the distribution of primary goods in the Rawlsian theory. The objection states that the model of distribution which aimed at enhancing neutrality and autonomy is in fact sustaining artificially a conception of a possessive individual, dominated by self-concern and material accumulation. The authors of this type of critique are Nagel and Schwartz<sup>11</sup>.

In "Rawls on Justice", Nagel signals the individualistic bias in the Rawlsian theory, arguing for a breach in consequential neutrality made by the equal share of primary goods<sup>12</sup>. His argument regards the social structure rendered and encouraged

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<sup>7</sup> *ibid.*, pp.13-21

<sup>8</sup> Nagel inclines towards this objection, suggesting Sandel's error in reading Rawls or labelling this particular reading as too rigid to fit the Rawlsian theory's intention.

Thomas Nagel, "Progressive but not Liberal", *The New York Review of Books*, vol. 53, no. 9 (May 2006)

<sup>9</sup> Kymlicka, p. 886

<sup>10</sup> *ibid.*, p. 893

<sup>11</sup> *ibid.*, pp. 886-893

<sup>12</sup> Thomas Nagel, "Rawls on Justice", *The Philosophical Review*, vol. 82, no. 2 (April 1973), pp. 227-230

by Rawls' version of distribution; primary goods may not be equally valuable to all conceptions of the good, in the form of individual sharing. By their very sharing they encourage a particular social structuring, further more enhanced by the presumption of mutually disinterest in the Original Position. Nagel uses this type of critique more as an example of a more extended critique regarding the exclusion of certain knowledge from the Original Position.

Kymlicka argues against the critique brought by Nagel and Schwartz, filtering it and judging it as a possible breach in each of the two main accounts of neutrality: justificatory, consequential. The counter-arguments are easily brought against Nagel and Schwartz based on a very simple technique, operating a switch between the objected and the objectors. The claim for a principle of distribution that would respect communal ways of life in the sense of a common share is subjected to even stronger objections for it institutes harsher limitations<sup>13</sup>.

Departing from the Rawlsian account of neutrality, the share of common goods renders the individual only two basic traits: autonomy and responsibility<sup>14</sup>. Therefore, he can operate a choice, and therefore, an investment in any way of life he chooses to; owning a share of primary goods does not impose restrictions on communal ways of life. In exchange, granting common shares of primary goods may enhance dependency and restrictions on individual autonomy. The whole logic on which Kymlicka's counter-arguments are founded rests on two fundamental facts: individual autonomy and a belief that the individual can operate shifts in preferences towards certain ends (therefore, ends are not a constitutive trait of the self in Kymlicka's view).

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<sup>13</sup> "(...) communal ends that cannot flourish under this arrangement should not <be upheld> by the coercive apparatus of the state."

Kymlicka, pp. 890-891

<sup>14</sup> Ibid., p. 893

The second group of objections regarding individualism is that of atomistic individualism. These objections are concerned with the way the Rawlsian theory, even if safeguarding autonomous choice, fails to safeguard a meaningful context for it, or rather, it undermines plurality. Kymlicka is right in judging this particular objection not as a claim against realizing the neutral ideal, but as against the ideal itself. As Kymlicka states, this claim is renders neutrality self-defeating<sup>15</sup>. It is a mixture of neutrality, and the competitiveness thus allowed (illustrated by Kymlicka through the concept of the cultural marketplace), that destroys a plural context for autonomous choice. The structure of the neutral argument would be as such:

- the individual is capable of autonomous will (departing from the Rawlsian account)
- the individual is granted equal liberty, compatible with an equal liberty for all; therefore he is allowed to exercise his free-will;
- the plural context is on one side assured by the state's neutrality in what regards promotion or hindering of any particular conceptions;
- Conclusion: The individual is free to exercise free will against a given plural background.

What was missing out of this argument chain was the competitive dimension which neutrality leaves behind as a beneficial/ natural condition in the beginning (compatible with justificatory neutrality), but which can also back-fire as a bias. In this case justificatory neutrality comes against consequential neutrality, by hindering the development of certain conceptions of the good. This sub-group of critique shall be left open by Kymlicka, pending between state interference within the cultural

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<sup>15</sup> *ibid.*, p.894

marketplace, or its lack, leaving behind the achievements of unrestricted competition<sup>16</sup>.

## ***Criticized Aspects in Politics of Recognition (Charles Taylor)***

### **Controversial Outcome Rendered by Authenticity**

Maeve Cooke's critique<sup>17</sup> to Taylor emphasis a point of breach between autonomy and authenticity, a point where Taylor's theory comes against the liberal ideal of equal dignity, heading towards sustaining the ideal of authenticity. At this point, while pushing forward the ideal of authenticity, together with its claim for distinctiveness and recognition, Taylor's theory loses part of its coherence. Assessing an equal worth, a judgement filtered through a process of recognition, is rendered impossible, due to the very nature of the claim of authenticity itself. The claim of authenticity leaves little, if no room at all, for judgements of value. Consequently, the claim of equal worthiness based on recognition finds the ideal it seeks backfiring, due to restrictions imposed by authenticity. If authenticity is coupled with uniqueness and distinctiveness, than judgements of value require an instance which surpasses all spaces characterized by these concepts. Only one not subjected to a claim for authenticity can assess the equal worthiness of distinct identities (context transcendent-standard). The authenticity acts as a restrictive influence of judgements. This is the feature on which Maeve Cooke asserts his critique.

Cooke analyses two ways out the 'authentic trap', ways that could lead towards assessing authenticity as a valid moral ideal, and which could also validate

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<sup>16</sup> *ibid.*, pp. 904-905

<sup>17</sup> Maeve Cooke, "Authenticity and Autonomy. Taylor, Habermas, and the Politics of Recognition", *Political Theory*, Vol.25, No.2 (April 1997), p.258-288

judgements of worth for authentic claims. The first proposes a “postmetaphysical world”<sup>18</sup>, a world in which the basis for the authentic claim (the conception of the good) could gain its decidability over worth through a universally valid standard. Though this would be thought as the only possible solution for the political sustenance of authenticity our world is yet not defined in such post-conventional terms, according to Cooke. The public sphere still inclines towards sustaining autonomy instead of authenticity, not producing recognition of identity as a value, but certain safeguards for it.

The second solution would come from inside the “inner self”<sup>19</sup> as an assessment of value, but here, the trap character of the ideal is even more obvious and Taylor’s claim is rendered problematic. Subjected to an inner faculty of judgement, characterized by authenticity, the self cannot be the source of claims that pretend universal validity or value.

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<sup>18</sup> *ibid.*, p. 264

<sup>19</sup> *ibid.*, p. 264

## Chapter II: The Framework for Neutrality

In this first chapter I shall analyze the crafting of the concept of neutrality and whether it can be legitimately labelled as a consistent denomination, a concept which can serve as a theoretical instrument afterwards in composing settings and frames of appliance. This analysis shall read through the strategy used in this particular conceptual crafting and through the critique faced by the biases left behind by this process. Solutions to these biases constantly set back the concept closer to its source, reinterpreting it in a manner that solves out counter-arguments brought by critique, aiming at a new, improved neutral position.

### ***a. Neutrality and Contest in Rawls' Conception of Justice***

The debate circling the question of law's neutrality regards the capacity of the liberal conception of law to establish itself upon a legitimate standard of desired moral equality among conceptions, or a valid conception of right. Whether such a standard can be reached, in a world where cultural relativism places at high stake continuous differentiations of the individuals' conception of good, and implicitly, just, is still a firing gun in many theorizing hands. Constituting a legitimate equality among citizens or groups, for the legal apparatus to function upon, may be, in this case, a tiring task, carried through endless disputes regarding questions of principles and universally applicable values. The prerequisite of universal rights and the neutrality endorsed in their appliance remains a mythical shadow in front of the emergence of

Politics of Recognition<sup>20</sup> which question the very substance of what was thought of as ‘universal value’. ‘Universal’ as such, ends being a good in itself, translating into a ghost pursued by all social scientists seeking to evolve legitimate theories of rights, fit for universal appliance.

Starting upon Rawls conception of justice, I shall enlist the given accounts of neutrality and the objection brought to the just character they endorse, as they are to be found in his revised version of ‘justice as fairness’<sup>21</sup>. I will present two main objections brought to Rawls’ theory, those of ‘individual atomism’ and ‘possessive individualism’<sup>22</sup>, as well as their dismantling brought by Will Kymlicka. Given Kymlicka’s views over cultural competition and what could be called neutrality in governing this process, I will end this insight by accepting the questions he leaves open and making a prospect for their answer.

### **Neutrality Accounts in the Rawlsian Theory**

Arriving to the much contested idea of neutrality, Rawls interprets the concept of neutrality into “procedural neutrality” and “neutrality of aim”<sup>23</sup>. The political conception which is founded upon the priority of right to the good, relates in some ways to these neutrality accounts, though not fully. However, when a relation between the two shall be considered it must not be done so from an external point, which views the political conception as a separate doctrine, but from within its sphere of

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<sup>20</sup> For arguments presented by the Politics of Recognition and the cultural relativism accuse brought to universal rights see Charles Taylor, “The Politics of Recognition”, in *Multiculturalism*, Princeton University Press, New Jersey, 1994, pp. 25-75

<sup>21</sup> The revised version is part of *Political Liberalism*, Columbia University Press, New York, 1993

<sup>22</sup> The claims in what concerns these two objections are made by Adina Schwartz (in “Moral Neutrality and Primary Goods”, *Ethics*, vol.83, no.4, Jul 1973, pp. 294-307) and Thomas Nagel (in “Rawls on Justice”, *The Philosophical Review*, vol. 82, no.2, Apr 1973, pp. 220-234). However, in my paper I shall only comment on the objection brought solely by Schwartz, as that is the main that Kymlicka takes into consideration.

<sup>23</sup> Rawls, 1988, pp.260-261

application, as the political conception aims itself at being considered a pure procedural account.

Considering “procedural neutrality” as an appeal to neutral values, under the siege of complete impartiality in all given cases, justice as fairness does not comply. However procedural it aims to be stated as, justice as fairness still carries the substantial burden of its conception of right, which encompasses more than pure procedural values. Given this precaution which he states, Rawls mentions that procedural neutrality can only be valued inside the political conception once one take into count solely the procedure it renders based on the principles it states (principles that may depart from the qualification of ‘neutral values’)<sup>24</sup>.

It is here that the point I have made before about the angle from which neutrality is appreciated (whether it is from outside or inside the functioning conception of justice) can be considered as having a crucial influence on labelling the rawlsian conception as neutral. As Rawls proposes, procedural neutrality can be functioning inside the conception as long as the prerequisite of the overlapping consensus, which is its substantial source, has been met. A new principia ground is established by the force of consensus, and regarding this as the ultimate justificatory register, justice as fairness can become procedurally neutral indeed. Basically this is the case in which we do not consider existing as such a universal account of procedural neutrality, but the qualitative part of this account becomes relative, in virtue of different principles the procedure is enacted upon.

The second account of neutrality enlisted by Rawls refers to “neutrality of aim”. Here the source of the aim rests upon the state as enactor of the political conception. Being neutral in respect to political aims would require the state to: (a) assure equal

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<sup>24</sup> Rawls 1988, p.262



opportunity for the citizens to pursue any conception of the good, according to their basic freedom in pursuing any such conception; (b) hold a balance and avoid favouring, promoting or assisting any conception of the good rather than another; (c) not to influence, through any of its policies, the rate of adherence that citizens have towards the existing comprehensive doctrines<sup>25</sup>. Given these three interpretations of neutrality of aim, Rawls admits out-front that the first meaning is impossible to be achieved, as the political conception is in itself partially comprehensive, and the first step it takes in relation to conceptions of the good is a selection. Justice as fairness is a doctrine built on permissible allegiance, but here, again, we have another difference of angle. Once enacting the political conception upon a formatted society, the state is neutral in aim in what regards the conceptions of good that are manifested justly under its sphere of influence.

Another breach arises when the third interpretation is applied to the political conception. The interaction between the two, the political conception on one hand and the conceptions of the good on the other, it is bound to have effects in a long run<sup>26</sup>. Such promises of neutrality cannot be made by justice as fairness, in the terms that every conception, where it partially or completely comprehensive, influences the choices or tendencies of the ones it regulates.

Though accountable as neutral in procedure and aim according to certain interpretations, political liberalism still holds a set of virtues which it pushes forward. These virtues are purely political virtues, once they are comprised within the political conception. They might rest upon certain conceptions of the good and individuals are free to contribute from the comprehensive register they hold as far as the political conception permits them to. The only thing that must be clearly stated is that every

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<sup>25</sup> Rawls 1988, p. 262

<sup>26</sup> Rawls 1988, p. 262

resemblance that might exist between the political conceptions and the comprehensive conceptions, has been politically filtered and subjected to the overall consensus, thus it has become a political virtue in itself<sup>27</sup>. Being subjected to consensus adds generality to all conceptions and thus transforms them into neutral grounds. Even if resembling any account of the good, political virtues do not identify themselves with any particular conceptions such as comprehensive, associational or familial. They are neutral in the respect that they have been placed above any such particular virtues and established as right, prior to the good of all that can be admissible under their ruling.

Closely connected to the consequential feature of the previous account of neutrality, Rawls points out a third account, the “neutrality of effect”<sup>28</sup>, stating that “political liberalism abandons as impracticable” this particular aspect of neutrality. He shall revisit this particular account, though in a larger frame, going outside the functioning political conception. The neutrality of effect is again highlighted when the selection operated by justice as fairness among existing conceptions of the good is questioned as unjust.

The effects that the appliance of the political conception has over comprehensive views can be placed under two relations: (a) exclusion, (b) lack of proper support<sup>29</sup>. The exclusion of comprehensive doctrines occurs when they hold views of the good incompatible with the conception of right forged by justice as fairness. In this respect, the process of selection and exclusion cannot be regarded as unjust according to the political conception, as its goal is to set a new standard of right. Thus, being dictated what is right, the exclusion of anything that does not come to meet that standard or fit the just ordered society, is a just act in itself.

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<sup>27</sup> Rawls 1988, pp. 263-264

<sup>28</sup> *ibid.*, p.263

<sup>29</sup> *ibid.*, p. 265

As for the second case, in which a conception is not incompatible in views but lacks proper support from the political conception functioning in a just constitutional regime, the fault is in the incompatibility of the procedures that the two conceptions hold. If the conception of good, though not excluded from the point of view of justice, requires a practice that comes against the very practice of the political conception, such an encounter shall deny in time the proper space for the comprehensive conception to evolve. The neutral capacity that the political conception holds towards comprehensive doctrines is however limited when it comes to the question of their survival in time. This process regards a neutrality of influence in what concerns the continuance of the pursuit that characterizes these doctrines. The political conception cannot escape the influence that it might have given social dynamics and the rearrangement of conceptions of the good. It is only the influence that the political virtues cast upon these conceptions and the basic liberal requirements made by the state, the influence lies also in the interactions that conflicting conceptions might have with one another. The non-interventional requirement made previously by neutrality of aim prohibits any positive influence regarding their survival. This process is classified by Rawls as neutral; it is a process that regards the restricted conditions given by a shared space and a political guidance over it. “No society can include in itself all forms of life.”<sup>30</sup> Even if labelled as an unjust act on the part of justice as fairness, this failure is simply a sacrifice that must be made in order to reach any practicable conception of right within a society<sup>31</sup>. Consensus is not set out as a full agreement, nor can its scheme be fully permissive. Compromises must be made along the way, but they are made in the spirit of maintaining or enhancing the practicability

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<sup>30</sup> *ibid.*, p.265

<sup>31</sup> *ibid.*, p.268

of another conception- the political one, which has an overriding force and represents a good in itself.

The main argument that is to be questioned here is how big this loss is, caused by lack of neutrality in influence, and how can it be valued or interpreted? Is a political conception just in allowing valuable losses, given the fact that certain conceptions might survive or even develop under different contexts? I shall come back later upon this argument, considering Kymlicka's response to it.

Rawls comes back on the argument with a defence of justice as fairness in front of the 'comprehensiveness' accuse brought to liberal conceptions<sup>32</sup>. The political conception does not follow a liberal comprehensive view in the way that classical liberalism might have done. Its requirements comprises of a moderated liberalism, political liberalism, which has a pure procedural aim. The political conception does not envisage liberalism as a good in itself, but simply extracts liberal accounts in order to allow the practicability of a commonly shared doctrine, fit for political usage. The state's promotion of liberal ends shall thus be restricted. Its educational program seeks only political virtues to be installed, as a basis of future cooperation and sustainability of the forged conception.

### **Adina Schwartz: Moral Controversy and Teleological Suspicion**

I shall use Schwartz's critique over moral neutrality in Rawls' conception of justice only as a short introduction to Kymlicka's interpretation of Rawls, which combats the critique and also introduces innovative aspects of the Rawlsian theory. There is however a breach between the two. Schwartz's text<sup>33</sup> criticizes the theory as

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<sup>32</sup> *ibid.*, pp. 267-268. Here Rawls appeals to the objection of comprehensive liberalism envisioning the classical liberalist accounts proposed by Kant and Mill, and departing with the political conception from them, in a comparative approach.

<sup>33</sup> Adina Schwartz, "Moral Neutrality and Primary Goods", in *Ethics*, vol. 83, no. 4, Jul 1973, pp. 294-307

developed in the *Theory of Justice* (1971), while Kymlicka's response to Schwartz<sup>34</sup> follows to the revision of the Rawlsian theory in "The Priority of Right and Ideas of the Good" (*Ethics*, 1988).

Adina Schwartz criticizes directly the framing of the Original Position, its minimalist ambition and moral neutrality. The grounds on which Schwartz thoroughly attacks Rawls are the introduction of the presupposition that, being rational, under the "veil of ignorance", individuals would rather prefer a maximizing amount of the primary goods<sup>35</sup>. Making a weak attempt to question the possibility of a rational choice in absence of any conception of the good, as interdicted by the veil of ignorance, Schwartz implies that the assumed preference for the larger share of primary goods might follow out of a conception of good itself, thus breaching the lack of teleological aspects in Rawls' theory<sup>36</sup>. She further on assumes that the choices made under the veil of ignorance hold no difference to those made under a reflective equilibrium. Such equilibrium, she argues, is reached through a doctrinaire path, and the doctrine Rawls uses is that of liberal democracy, his theory being biased as to favour such a conception<sup>37</sup>. Once destroying the neutrality request on these grounds, Schwartz proceeds with her criticism assuming teleological points of view and the relation they hold to the conception of justice.

Using a socialist example she argues that the requirement for the largest possible share of primary goods cannot be considered as neutral to one who wishes to adopt a socialist way of life, valuing labour instead of wealth<sup>38</sup>. In this example, given the possibility to renounce part of the share of primary goods, Schwartz argues on for the

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<sup>34</sup> Will Kymlicka, "Liberal Individualism and Liberal Neutrality", in *Ethics*, 1973, vol. 99, no. 4, Jul 1989, pp. 883-905

<sup>35</sup> Schwartz, pp. 296-297

<sup>36</sup> *ibid.*, p.265

<sup>37</sup> *ibid.*, p.298

<sup>38</sup> *ibid.*, pp. 302-303

influencing context, which may prove unfavourable for a socialist conception as it prevents “from creating strong ties of affection with other human beings”<sup>39</sup>, among several arguments of a similar type (based on the consequences of individual weaknesses: envy, temptation<sup>40</sup>). By this Schwartz pushes forward a main objection to Rawls that Kymlicka shall label as ‘possessive individualism’<sup>41</sup>.

Although Schwartz also a critique of the non-material goods rendered by the conception of justice (mainly liberty<sup>42</sup>), in her critique of moral neutrality, I shall stop at this simplified version of her argument, commenting upon its validity in my conclusion.

### **Will Kymlicka: Emphasizing Individual Autonomy**

In “Liberal Individualism and Liberal Neutrality”<sup>43</sup>, Kymlicka builds up a defence to the criticism brought to Rawls’ conception of neutrality, arguing that most of the previous criticism rests simply upon misinterpretations of this account. He imparts the neutrality accounts into two new denominations, those of “justificatory” and “consequential”<sup>44</sup> neutrality, as opposed to character of governmental policies. While the first is concerned with neutrality in justifying the enacted policies, the second requires neutral consequences in their appliance.

Kymlicka sets out to characterize Rawls conception according to one of these two accounts, beginning with counteracting Raz’s interpretation of Rawlsian

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<sup>39</sup> *ibid.*, p. 304.

<sup>40</sup> Schwartz’s main arguments state an obstacle in the pursuit of a conception of the good (in the example: the socialist conception) based on reflection on temptation as times consuming, and envy caused by attaining wealth, which would impede a moral rationing to others. In these assumptions she seems to assume that the sense of morality lies outside the individual and cannot be controlled through his own virtues.

<sup>41</sup> Kymlicka, p. 886

<sup>42</sup> Schwartz, pp. 303-304

<sup>43</sup> Will Kymlicka, “Liberal Individualism and Liberal Neutrality”, in *Ethics*, 1973, vol. 99, no. 4, Jul 1989, pp. 883-905

<sup>44</sup> Kymlicka, p.884

neutrality as consequential<sup>45</sup>. As Kymlicka shall argue, Rawls' conception of justice cannot be considered as consequentially neutral. In proving this he appeals to two main features in the theory of justice: respect for civil liberties and the role of equality of resources, according to the distribution of primary goods.

Civil liberties, interpreted as freedom of speech and association, are bound to have non-neutral consequences<sup>46</sup>. Given the force of civil liberties, certain conceptions of good shall suffer from their exercise being just, as they shall have a less powerful force of promoting their ideal and sustaining their structuring (gaining adherence). Kymlicka shall characterise the consequences of a free policy of civil liberties as “a marketplace of ideas”<sup>47</sup>, which he will use in his later conceptualizing of the “cultural marketplace”<sup>48</sup>. Thus, the consequence of civil liberties in Rawls' theory is a competitive feature of society, in what regards the ability to pursuit certain comprehensive conceptions.

The assumption of equal distribution of primary goods also renders a non-neutral aspect in relation to the ways of life comprised under the conception of justice. Arguing that “not all ways of life have the same costs”<sup>49</sup>, Kymlicka makes this aspect as clear as possible. Equality in the distribution of goods can be achieved as long as we give up the ideal of equality on a scheme of welfare. The two of them are impossible to achieve, given the different requirements the standard of welfare endorses in different conceptions. He defends this non-neutral effect on the Rawlsian argument of individual responsibility. Individuals are free to choose their most preferred way of life, but the just character of their claims cannot be set out by a

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<sup>45</sup> *ibid.*, p.884-886

<sup>46</sup> *ibid.*, p.884

<sup>47</sup> *ibid.*, p.884

<sup>48</sup> *ibid.*, mentioning “cultural marketplace”: p.884, development of the concept and comments on its relation to neutrality: pp. 893-905

<sup>49</sup> *ibid.*, p.884-885

subjective ingredient, such as their desire. Therefore, in order to give opportunity for such a thing as individual responsibility for one's way of life, a standard of justice in distribution must be set<sup>50</sup>. According to this standard, reasonable requests are to be met in this sense by the conception of justice, while preventing the unreasonable ones from making excessive demands.

Given these two arguments against Raz's labelling of justice as fairness being consequentially neutral, Kymlicka concludes that the conception endorsed by Rawls is that of justificatory neutrality<sup>51</sup>. Both consequences enlisted above, cultural competition and responsibility in demands, relate to a justificatory account. The justification for individual responsibility I have mentioned already above. In what regards the justificatory neutrality of cultural competition, this rests upon the given premise that the conception of justice operates no ranking amongst the particular values held by different ways of life. The state has no reference in what regards their value, "<they are not evaluated at all from a social standpoint><sup>52</sup>"; thus the state's policies are neutral in what regards their pursuit.

In what regards Schwartz's objection that the theory of justice is not morally neutral and it is purposely biased against certain conceptions of the good, holding as a centrepiece the liberal democratic account of justice<sup>53</sup>, Kymlicka manages to argue again in favour of Rawls. The presumption that individuals are entitled to the largest possible share of primary goods in order to pursue their interests does not endorse a conception of "possessive individualism"<sup>54</sup>. Kymlicka stresses out a hidden aspect in

<sup>50</sup> He also exemplifies with a illustrative quote from Rawls' "Social Unity and Primary Goods", *ibid.*, p.885

<sup>51</sup> *ibid.*, pp. 885-886

<sup>52</sup> Rawls, "Social Unity", p. 172; cf. Rawls, *A Theory of Justice*, (London: Oxford University Press, 1971), p. 94; extracted from Kymlicka, "Liberal Individualism and Liberal Neutrality", in *Ethics*, 1973, vol. 99, no. 4, Jul 1989, p. 886

<sup>53</sup> Schwartz, p. 298

<sup>54</sup> label that Kymlicka renders to Schwartz's critique over the distribution of primary goods in the Rawlsian theory, p. 886-887



Schwartz's criticism; while, "at first glance" it seemed "to be attacking the idea of consequential neutrality"<sup>55</sup>, stating that "not all ways of life will fare equally well in a Rawlsian society"<sup>56</sup>, her argument seems now just a precaution against the consequences enabled by civil liberties. Kymlicka also interprets it as accuse of violation of the justificatory neutrality achieved by Rawls, considering that the distribution of goods favours the promotion of individualistic ways of life over non-individualistic ones<sup>57</sup>. This statement breaches Rawls' second interpretation of neutrality of aim, "that the state is not to do anything intended to favour or promote any particular comprehensive doctrine rather than another or to give greater assistance to those who pursue it".

Rawls' conception is not biased according to any psychological account of the individual, much less according to a certain conception of the good. The key in facing Schwartz's criticism is the assumption of individual autonomy. As this is placed above all other accounts, the share of primary goods is bound to act as a safeguard of it, and thus, enhancing individual liberty, not restricting it<sup>58</sup>. It cannot be argued that material goods cast a spell on individual autonomy, functioning as a condition that biases his character. Out of the contrary, the goods are essential in sustaining the freedom of choice. According to his freedom of choice, the individual is not bound to be possessive; he can put at use his share of the goods in pursuit of his own conception of life, give it up or join other individuals in any relations, including ties of affection<sup>59</sup>. By this, Kymlicka dismantles the accuse cast on justificatory neutrality. A safeguard for autonomy does not impede the individual to share non-individualistic or non-materialistic ways of life; it simply states his capacity of valuing and choosing

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<sup>55</sup> Kymlicka, p. 887

<sup>56</sup> *ibid.*, p.887

<sup>57</sup> *ibid.*, p.887

<sup>58</sup> *ibid.*, pp. 888-893

<sup>59</sup> *ibid.*, pp. 891-892

freely among given opportunities. Further more, in order to pursue non-individualistic ways of life, individuals can argue for collective ways of paying taxes and receiving benefits, if this makes their pursuit more effective<sup>60</sup>.

The second part of Kymlicka's article is concerned with the "neutrality of effect" or "influence"<sup>61</sup>, stated by Rawls as the third account of neutrality, rendered impracticable by the political conception of justice. Kymlicka had introduced a new concept in order to denounce the competitive consequences cast upon comprehensive doctrines by the civil liberties: "cultural marketplace"<sup>62</sup>. As defined, the cultural marketplace is a free place of competition among comprehensive doctrines which struggle not only to pursue their conception of the good, but also to survive and gain adherence to the public. What are the objections brought to this state of facts? Rawls had predicted them when questioning whether the effects of the political conception upon the comprehensive doctrines could have been labelled as just<sup>63</sup>. He chose to end this particular question by arguing that, in order to forge a practicable political conception, such sacrifices are to be made. They are the sacrifices of a shared political space and of the prerequisite of other types of neutrality.

Kymlicka takes into consideration two objections to the concept of a cultural marketplace: (1) "the need for a shared cultural structure that provides individuals with meaningful options"<sup>64</sup>, (2) "the need for shared forums in which to evaluate these options"<sup>65</sup>. The first objection criticizes the movement of the cultural market, which may act in favour or against certain conceptions of the good. Given the cultural dynamism, cultural options are bound to be less in number, as more powerful

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<sup>60</sup> *ibid.*, p.891

<sup>61</sup> Rawls, p. 263

<sup>62</sup> Kymlicka, p.884

<sup>63</sup> Rawls, pp. 264-267

<sup>64</sup> Kymlicka, p.893

<sup>65</sup> *ibid.*, p.893

conceptions, with more allegiance shall have an overriding message. However, practicing neutrality from an anti-perfectionist point of view, the restraint stated by Rawls' neutrality of aim, impedes the use of state action in preserving cultural entities. Kymlicka concludes pessimistically at this point that neutrality proves to be "self-defeating"<sup>66</sup>. However, he renders two hypothetical situations of state intervention as the only solution to rectify the unjust consequences of neutrality of aim: (a) that the state should offer assistance but correlated with the individuals contribution in support of one or the other conception of good<sup>67</sup>; (b) that the state fully intervenes by assuring a full range of options, promoting conceptions regardless of the individuals contribution<sup>68</sup>. He translates this crossroad as a choice between social perfectionism and state perfectionism, given one of the two's entitlement to rank conceptions according to value and, consequently, give support.

The second objection referred to the necessity of a deliberation arena to serve the affirmation of the plurality of conceptions retained in the social sphere. Primarily, the arena has an epistemological purpose; it allows equal affirmation of all existing conceptions and, thus, renders the availability of information which individuals need in order to operate choices among given opportunities. Here, the question rests once again between social deliberation and its capturing within a political frame. The argument brought against the free social deliberation is the one which Kymlicka paraphrases from Habermas<sup>69</sup>, that the societal frame does not offer proper conditions for such deliberating events to take place. Further more, the lack of them, translates into a void in the individual knowledge of permissible conceptions, and a choice operated on restricted (or biased) grounds.

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<sup>66</sup> *ibid.*, p.894

<sup>67</sup> *ibid.*, p. 895

<sup>68</sup> *ibid.*, p.895

<sup>69</sup> *ibid.*, p.899

Concerning the political framing of the space for “competitive struggle”<sup>70</sup>, Kymlicka asserts that politically regulating the process always comes about with dangers. Such dangers are those of public dismissal of a certain conception, if it fails to meet the rigid requirements of a given political arena. In this sense, the dismissal is even more dramatic as it comes with political effects. Another important objection brought by Kymlicka is that political deliberation always functions under the siege of majority<sup>71</sup>. Given the plurality of comprehensive doctrines, who prevents their affirmation within a political space to be biased by a majority’s range of preferences?

Kymlicka argues that the liberal conception cannot be accused of sustaining individual atomism, and thus, rendering unfavourable conditions for such consciousness debates to take place. He stresses on the rights to free speech and association which can be interpreted as encouraging communal purposes<sup>72</sup>. The only incentive that the liberals deny is towards politically intervening and displacing such individual accounts within the state’s action.

Kymlicka’s conclusion to the neutrality debate is that neither the objection of “possessive individualism”, nor the one of “individual atomism” are the real curses to be cast upon the liberal conception of justice. Rather than that, the dilemma rests upon whether certain relations, considered as relevant for further individual development, are to be placed under state regulation, as another safeguard, enhancing the already given accounts of neutrality<sup>73</sup>.

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<sup>70</sup> Habermas’ equivalent of the “cultural marketplace” labelled by Kymlicka; theorized in Jürgen Habermas, “Struggles for Recognition in the Democratic Constitutional State”, in *Multiculturalism. Examining the Politics of Recognition*, edited by A. Gutmann, Princeton: PUP, 1994

<sup>71</sup> Kymlicka, pp. 900-901

<sup>72</sup> *ibid.*, p.897, p.904

<sup>73</sup> *ibid.*, p.905

## Preliminary Conclusions

I would like first to point out some faults in Schwartz's criticism of Rawls. At first, she leaves an important question she poses unanswered: "How can a rational individual choose principles to further his advantage if he is behind the <veil of ignorance> and does not know facts about himself and society and his conception of the good?"<sup>74</sup> I think this unanswered question holds the main key to her criticism. She criticizes the minimalist condition of the Original Position, arguing that it holds a teleological tendency (towards the good, as envisioned by liberal-democrats) and, even more, that Rawls makes "hypothesis about psychology and society which are controversial"<sup>75</sup>.

Her criticism is in fact inconsistent, while directed at facts rendered by her own view on the subject. She fails, not making clear the points her critique is willing to make: is she in fact stating the impossibility of a choice of principles, given the lack of ends, as understood by teleological theories? Or is she arguing, out of the contrary, the affront of teleology based on the faults she finds in Rawls's theory? If arguing for the latter, then Kymlicka brings enough arguments to clear Rawls of her objection. But, if arguing for the former, she chooses the wrong way to do so, stressing too much on rationality as presented in "goodness as rationality"<sup>76</sup>, instead of presenting an alternative.

Anyway, her main claim, that non-individualistic ways of life are disadvantaged as opposed to individualistic ones in Rawls's theory, is a critique directed at neutrality, but she avoids mentioning whether the neutrality she seeks is that of a teleological theory or is to be found in avoiding any conception of the good.

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<sup>74</sup> Schwartz, p.296

<sup>75</sup> *ibid.*, p. 297

<sup>76</sup> *ibid.*, pp.300-302

Furthermore, she does not give any alternative or theoretical solution, her argument presenting alternatives which do not endorse any conception of neutrality.

In what regards the question made by Kymlicka at the end of his defence on Rawls, I shall try to imagine an answer based on a remark Rawls makes himself in *Political Liberalism*, appealing to Isaiah Berlin: “No society can include in itself all forms of life. We may indeed lament the limited space (...) of social worlds, and of ours in particular, and we may regret some of the inevitable effects of our culture and social structure. (...) there is no social world without loss.”<sup>77</sup> When making this argument which regards the neutrality of effect, Rawls has primarily in mind comprehensive conceptions which are either conflicting with his political conception, conflicting with other, more influential, conceptions to be found in society or conflicting with the very ordering of the society (that of a constitutional democratic state). However, as Kymlicka also notices, Rawls labels these effects as “social necessities”<sup>78</sup> and does not consider they could be seen as unjust; since they serve practicability of politics, neither does he regret their lost values. However, if the value argument were to be stressed more, and stressed upon the requisite of free choice among meaningful options, Rawls might change his views over it.

If there is a direct relation between existing meanings, as incorporated by contemporary conceptions, and the individual freedom of choice would rest on their preservation, then there are two ways out of this dilemma indeed. Were it argued in favour of their preservation, and this left to society alone, there will always be more influential conceptions with supporters that have a much greater capacity of sustaining and promoting their value. In this view, less influential conceptions are

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<sup>77</sup> Rawls 1993, p.265

<sup>78</sup> Rawls 1993, p. 266

bound to suffer of have a low representation in the social sphere, which would, indirectly, lead to their extinction.

If, on the other hand, the state will abandon the restrained neutrality and decide to support certain conceptions, even to a minimal level assuring their survival, then the meaningful set of options could be safely preserved. The only problem with this view, besides the arguments already brought against it by Kymlicka<sup>79</sup>, is the length that the state's intervention should go in influencing cultural development. Whatever becomes politically regulated loses the attributes that Rawls enlisted for having the right as prior to the good. Thus, even partially, these precautions would give way to political conceptions and a less free system of dynamic identities. If the state can assume the capacity of promoting certain conceptions, while giving the way for new ones to develop, there should be no problem. But these are the prerequisites of a culture of freedom, under political safeguarding. There are limits imposed on the state's capacity in this sense, based on its resources and, as well, on a limited institutional space. The state's memory and appetite can only go so far into the cultural background. And were it to do so, there is always a risk that the political regulation itself, holding on its side the benefits of the political culture, would unfairly promote ways of life, impeding others to develop freely at the societal level. In this sense the range of choices would be unfairly biased against cultural development, and affecting, as such, the range for individual choices.

Apart from this, there is a third way, which might sustain a breach between the political regulation and society's development in what regards cultural aspects. What if, given the state regulation, seeking to aid their options, individuals would make use of their civil liberties, promoting new ways of life, rested upon an independent

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<sup>79</sup> Kymlicka, pp. 894-905

societal development or would continue to atomize, regardless of the cultural options given? Wouldn't we then be living in a world of fictional identities artificially sustained by the state? Who could trust the real social value that lies beneath those emblematic options? And more important, where would the individual choice find its grounds.

Kymlicka is right when saying that the real question is whether relations among individuals are to be politically regulated, and this is a fair question, if given a real danger of individual atomism. But then, deciding to prevent it would necessarily enhance the comprehensive character of the political conception, suggesting a conception about the individual good which might not come against any other comprehensive conceptions, but come against the individual himself. Insofar, the objection of individual atomism, as this involves only community aspects, does not come against any political conception which aims at remaining neutral on comprehensive grounds.



## ***b. Neutrality as a Strategic Attribute of a Privileged Position: the Quest for the Locus of Neutrality***

*“The difficulty is this: we must find some point of view, removed from and not distorted by the particular features and circumstances of the all-encompassing background framework, from which a fair agreement between free and equal persons can be reached.”<sup>80</sup>*

### **A Primacy Contested**

From the very beginning one must have a clear view of what it is usually understood or aimed at when considering neutrality. In this subchapter I shall discuss the conceptual features as well as the possibility of achieving a neutral political conception. The central idea proposed by the liberal conception is that government commits itself to be neutral among different moral or religious (all together labelled as comprehensive views in the Rawlsian theory) of the good.

I have set out the objective of a locus of neutrality, since I consider this denomination to be most proper, considering the neutral ambition. Neutrality is a desideratum, in the form of an attribute. Neutrality is not itself the objective of a policy, it represents a feature, a view embracing political considerations regarding the just character of the society. One of the facts rendering this second order substance (attributive) of neutrality is that the concept assesses itself on previous existing grounds: neutrality presupposes plurality. Within its very expression, neutrality already acknowledges the existence of a plural dimension in society in what regards various views of the good. Neutrality does not seek denial, refusal, oppression or appraisal, nor does it seek to establish itself as a competitive view. Neutrality is a

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<sup>80</sup> John Rawls, “Justice as Fairness”, *Philosophy and Public Affairs*, vol. 15, no. 3 (Summer 1985), p.235

code of interpretation, for a plural lecture operated against the societal background; it is a form seeking fulfilment through capturing plurality.

I consider the locus of neutrality to be the most important feature in rendering the conceptual validity. The possibility of finding such a locus or the setting that would render the required traits in order to achieve a neutral position is constantly questioned. The quest for this setting, as Sandel interprets it<sup>81</sup>, is the consequence of a rupture between the ancient and the modern views in political thought. Whilst the old view required a conception of the good which would exhaust the political ideal (were it common good, achieved through self-rule or another comprehensive view equated out of a religious view), the modern rupture strips the political structure of comprehensive meaning. In doing so, it achieves a procedural account of the political, installing fairness at its top and leaving the meaning relative against a social background. The procedural republic is a set of fair practices which are the rules of cooperation within a plural society where various conceptions of the good coexist and where the ends are separated from the target of the political process<sup>82</sup>. In this sense, the political process is not anymore a pursuit of good but a code of political conduct acknowledging the right and shifting the pursuit of good in another dimension.

Sandel questions the basis of the liberal demand for neutrality in the form of seeking justification for the liberal ideal: if neutrality cannot be claimed in the name of the highest common good (which has been shifted in another, lower registry) then where does liberalism find its source of legitimizing the neutral claim? Sandel's proposal of the liberal claim as a paradox<sup>83</sup> is mistaken in so far as it keeps as a centrepiece the view of the highest common good (republican ideal). The liberal demand cannot be criticized on the very grounds it dismissed in the first place.

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<sup>81</sup> Sandel 1996, pp. 2-8

<sup>82</sup> Sandel 1996, pp. 10-11

<sup>83</sup> *ibid.*, pp. 12-13

Acknowledging the shift produced by liberalism, Sandel interprets it as a self-defeat, as an illusory background, a theory sustained through a vicious argumentative circle. What is taken at stake here is the rupture produced though the neutral claim between constitutive and procedural/functional values. Is there really a difference between the two? The main point is not proving the difference but seeking a legitimate source for claiming the latter, a source different from any comprehensive doctrine. If it were returning to any view of the good than indeed, liberalism would be proven self-defeating.

In proving his argument against the liberal neutral demand Sandel deconstructs the central piece of the liberal argument: the Right as prior to the Good. Based on this construct, Sandel proceeds with a corollary argument stating that the Right comes prior to the Good only when considering the Self as prior to the Ends. This corollary argument seeks to defeat the Rawlsian Original Position as a source of neutrality. Maintaining the two parallel structures, the Right as prior to the Good and the Self as prior to its Ends, Sandel brings in an external argument aimed at the liberal conception of the self, thus attacking one of the two main pillars in the neutral thesis<sup>84</sup>. The line of his argument is easy to track: assuming that the liberal conception finds the locus of neutrality in the claim of an unencumbered self, defeating this claim destroys the priority that the self held towards its ends. Consequently, the first priority relation being destroyed, the corollary priority of the Right to the Good is rendered invalid, as the self can no longer hold any unencumbered conscience of the Right. The liberal claim is proven self-defeating in the point where the Right held as prior is interpreted through a comprehensive lens rendered by an encumbered self.

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<sup>84</sup> *ibid.*, pp. 11-17

The argument in a more extended form is presented in *Liberalism and the Limits of Justice*, as a critique of the demise of metaphysics from the Original Position. Michael Sandel, *Liberalism and the Limits of Justice*, Cambridge University Press, New York, 1982, pp. 24-39

Sandel bases his conclusion on a deep misreading of the liberal principles, stating that the valuable character of the Right, presumed as foundational, is comparable to that of all other moral values which come ulterior to it due to the moral relativism that is to be found within society. 'Right''s interpretation as a value compared to other values comprised within comprehensive views denies the procedural account stated within the liberal neutral demand.

He draws a conception of the self which he deeply believes as opposing the liberal version. In *Democracy's Discontent*, he comments about the flaws of US Democracy and blames the political biases on a deficit of communal life<sup>85</sup>, deficit which is induced by a general appliance of a liberal democracy holding close to its heart, as the source of its laws, the conception of an unencumbered self. Taking this as a landmark, Sandel sets out to question the legitimacy of this conception, and altogether the validity of a liberal claim for neutrality, as detained by the concept of Right. The self rendered by Sandel is the self who participates in a realistic view of crafting political conception. This particular self does not limit its constitutive traits to the procedural values of the liberal conception. Out of the contrary, the liberal self is an incomplete version and a false agency claimed for the sake of sustaining the possibility of neutrality and a conception of an overriding Right. Thus, in Sandel's view, the liberal construction is bound to crumble under the weight of false premises.

The alternative conception of the self proposed by Sandel is a self that is constituted against a larger moral horizon, a horizon which cannot be restricted to a universal account of rights. The self cannot be separated from its traits gained in communal life and cannot be perceived as prior to all its ends. Since this is the way Sandel interprets the self rendered by the Rawlsian political conception, the principles

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<sup>85</sup> Sandel 1996, pp. 3-4

of right rendered by blindfolded selves (the blindfold equating in Sandel's view a temporal priority, a foundational position in what regards rights), then the principles rendered within this context cannot be valid or they are biased and prone to malfunction in appliance settings (such as Sandel's example with the US democracy).

In *Liberalism and the Limits of Justice*, Sandel makes another parallel construction between features of the social life. He argues that plurality and unity are the two basic dimensions of human societies<sup>86</sup>. Once having labelled these two basic traits, he engages in the deconstruction of the neutral liberal ideal from its reinterpreted locus: unity. If it is not to be found in a foundational, prior account, then neutrality must reside in unity. However, the two traits are not equally essential in defining the substance of the society; plurality runs much deeper and it is much more secure and independent as a feature within this context. Unity, however, is a construct in Sandel's view.

The Rawlsian reading of unity was the individual's capacity for justice, in a society first characterized by a principle of individuation. Sandel displaces this view, rendering unity or "identity of interests"<sup>87</sup> as a mere happening, as an observation and logic of coming together instead of a subsistent code to plurality. The structure of Sandel's argument in this particular case has changed; he tries to switch the hierarchical relation that he will be later on discrediting through an undermining method (through the concept of the encumbered self) in *Democracy's Discontent*. Working again with a parallel construction he claims plurality (the ends) to be prior to unity (the right). The arguments are similar keeping two parallel lines:

*Encumbered self- Plurality -Ends*

*Unencumbered Self- Unity –Right*

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<sup>86</sup> Sandel 1982, p. 51

<sup>87</sup> *ibid.*, p. 52

In the next section I shall prove how misreading Rawls (as Nagel also claims) causes the occasion for Sandel's critique of the unencumbered self and his arrival to a point where the political conception must coincide with a comprehensive doctrine, thus leaving no room for neutrality or any account of the Right.

### **A Corrected Lecture (Nagel on Sandel)**

Looking back at the critique of liberalism operated by Sandel, starting with the dysfunctions within the American Democracy, Thomas Nagel states the fact that, in spite of all the problems and issues the system has faced and is currently pressured by, the fact that it maintains cohesion and respects the principles enlisted in the constitution is part of the evidence against Sandel's argument<sup>88</sup>.

Nagel argues that Sandel has made use of an erred lecture of liberalism in order to further his republican thesis, arguing for the common good as a background for all political action. The error is induced while interpreting liberalism as a teleological conception; Sandel does this as a consequence of his own conception of the self, which he cannot possibly see as unencumbered. Liberalism's claim for neutrality establishes itself as a fall in a void of meaning: ends are meaningful only when chosen by the unencumbered self, having no prior value. Thus, Sandel interprets the liberal claim as a claim set out to diminish the value of all constitutive traits of the individual, including ends. However, Nagel states<sup>89</sup>, Rawls intention was not a lack of attributing value to particular ends, as in disregarding them, separately from the individual. Nagel argues that especially because each of those ends come filled with meaning, neutrality seeks its grounds among them<sup>90</sup>. In this view, individual liberty is just a safe-keeper of valuable ends, which it can choose and pursue freely according

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<sup>88</sup> Nagel 2006, p. 1

<sup>89</sup> *ibid.*, p. 6

<sup>90</sup> *ibid.*, p. 6

to the liberal conception of the right. The aim of neutrality is not value-diminishing or disregarding towards particular ends, neutrality seeks to re-insure a non-exclusivist policy in what regards comprehensive conceptions, and by the very fact of pressing the neutral safeguard against the plural background, it acknowledges their meaning and their social importance.

For this misperception of the ‘selective’ process imposed by neutrality among ends, by bracketing them and thus subtracting from their value, Nagel reviews Sandel’s intervention on abortion. If, as Nagel considers it, Sandel presupposes the question of abortion already settled by the liberal conception of Right, whether the Catholic view on it be were set aside or considered false, then Sandel gives another proof of his misinterpretation. Comprehensive conceptions of the good are not judged by liberalism in absolute terms as true/false, nor are they to be set aside based on their assigned value of truth. Sandel’s mistake here is his view of liberalism as standing on equal footing, in a competitive position, to any other conception of the good<sup>91</sup>. If there can be said to be a truth in the procedural account of the Right, then this truth does not neutralize value or truth held by particular ends, by means of its validity.

Nagel justifies in some way Sandel’s misreading by noticing a paradox in the liberal claim of procedural Right. He states this paradox by use of Sandel’s distinction between a “naïve”<sup>92</sup> and a “sophisticated”<sup>93</sup> view on justice claims. Whist a naïve would think that claims of justice are based on considerations regarding moral worth, the sophisticated argument (neutral claim) states that one can regard as just practices which are not entailed within his own view of moral worth. The latter view is read by Sandel as a paradox and this is the point where he seeks a restitution of both meaning

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<sup>91</sup> *ibid.*, pp. 7-8

<sup>92</sup> *ibid.*, pp. 8-9

<sup>93</sup> *ibid.*, pp. 8-9

and logics to the claim of justice, by redirecting it towards an ideal of a common good.

The basic question remaining here is about the way in which the liberal claim is perceived and what institutes its moral supremacy? Nagel reminds that for Rawls the moral value of the liberal principle was detached from personal ends, by its assessment on the basis of the collective identity of the state (therefore, the concept of Right has an administrative, procedural connotation justifying its appliance). As opposed to the procedural republic, Sandel holds onto the view that moral priority should only be rendered by a comprehensive conception of the good, based on the value of truth and the practice of cultivating virtue. In this Sandel can be read through the distinction he makes in *Liberalism and the Limits of Justice*<sup>94</sup> among the *moral* and the *foundational*<sup>95</sup> understanding of right. This distinction regards the various interpretations of the deontological claim: as a “first order ethic”, taking “precedence over other moral and practical concern”<sup>96</sup> or, as opposing teleology, in the sense that the account of Right does not rely on any conception of the good. If the two understandings hold no relation to each-other, the foundational understanding not being necessary in order to justify ethical precedence, then Sandel has a chance of arguing for another foundation, dependent, tied in the realm of a comprehensive conception.

The dangers brought by such a vision is a non-selective reading and an unrestricted pursuit of comprehensive conceptions, up to the point where their value are pursued as a common good, gaining precedence over any other ethical considerations. Sandel’s argument has its own flaws regarding the lack of limit in a deliberative process that would guide citizens to a conception of common good and

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<sup>94</sup> Sandel 1982

<sup>95</sup> *ibid.*, p. 3

<sup>96</sup> *ibid.*, p. 3



that would govern its pursuit. The liberal concept of the Right, through its neutral ambition provided this exact limit. The boundary between the pursuit of good and doing harm; a limit imposed on the liberal self against itself. Without this limit, even democracy can malfunction, as it has been already proven by history. Giving the power to the people it is not in itself a solution for success. The power must be restricted. Democracy, through its dynamic process, can suffer metamorphosis. Regarded as a pure mechanism, to be filled with the pursuit of a comprehensive conception, democracy proves flexible and follows the lines drawn by the good pursuit. Unrestricted by any concept of Right, citizens in a democracy have the power to turn it into a tyranny, this being one of the main democratic dilemmas.

A conception of good does entail considerations upon moral worth and perception of what's good and evil; however, the basis of these considerations is similar to that of a judgement of value, it is subjective, limited, tied within the realm of the conception itself. Captured within a political mechanism, these considerations gain absolute power and the door of escaping them becomes narrower as the system turns more authoritative. Against this, regarding the concept of Right, Nagel argues "respect for our fellow citizens provides the moral source needed to justify the protection of rights (...) it defines the restricted political terrain on which we ought to argue about our common institutions"<sup>97</sup>. The Right envisages the citizen's dimension, the submission to a restricted form of public life but the insurance of gaining one altogether. Public life is not based on empathy or sharing the realms of a comprehensive conception, on a joint effort in pursuing the truth held by one or another ideal. Public life is redirected towards the values of citizenship, and public values such as tolerance and recognition, and by following a procedural account and

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<sup>97</sup> Nagel 2006, p. 9

holding respect as a guideline, public life enlarges the frame for cooperation and all benefits that are rendered by it.

### **A Suspended Locus (Nagel on Rawls)**

Sandel had argued against the Rawlsian claim for the primacy of justice by attacking the concept of the unencumbered self as a source of just principles in an original position, and the conventional unity described by the concept of right, opposing it to a republican ideal of a common good. The critique regarded the impracticability of considering individuals as capable of a non-comprehensive vision of the right, as persons whose beliefs are formed within and targeted towards a certain type of public life, closely tied to communitarian traits. In what regards a consensus upon the principles of right, thus uniting within a single line of thought individuals dispersed according to the pursuit of particular ends, Sandel had argued that this mechanism cannot function completely (exhausting the ethical substance within the society and compelling it in the realm of right), since the identity of interests is a not a basic trait but an arbitrary feature, a mere coincidence.

Rawls has received many interpretations, and, as Nagel also suggests when stating Sandel's misunderstanding of Rawls, dependent on the various interpretations, the critiques faced by the Rawlsian conception of justice as fairness aims different theoretical highlights. However, especially because the range of interpretations is so complex, when starting a critical argument the Rawlsian theory should be considered according to its entire dynamics of interpretation (a quality also used by Rawls in self-defence). Nagel acknowledges this fact and looks deeper into the theoretical background, searching for a full understanding. In the *Philosophical Review*, April

1973<sup>98</sup>, he states that Rawls' Theory of Justice can be understood according to three dimensions: "a vision of men and society as it should be"<sup>99</sup>, "a conception of moral theory"<sup>100</sup>, "principles expressive of the vision, in accordance with methods that reflect the conception of moral theory"<sup>101</sup>. Capturing along these three dimensions the Rawlsian theory, Nagel reads Rawls as the voice of an emerging ethics, one that is not drawn from axioms or bound to any definitions (which would be the case with an ethics of a comprehensive conception). He argues for this interpretation by use of a very good metaphorical comparison: "ethics explores our moral sense as grammar explores our linguistic competence"<sup>102</sup>. This emerging view over ethics exposes the moral principles as relative, as developing, subjected to a clashing point between theoretical frames and empirical observations. Ethics must remain flexible, for ethics is a construct. With this Nagel dissolves all possible critique, similar to that of Sandel, which claimed that the principles of Right should oppose on footing equality any constructed ethics (drawn from comprehensive conceptions) and prove validity by winning out in a battle of arguments.

The privileged position of the conception of Right assumes no such footing equality. Rather, it serves as a structural knot for comprehensive conceptions, and from this, it claims its neutrality. Nagel tries to defend this particular nodal feature by pointing towards another understanding of the principles of justice. The claim of neutrality and all its subsidiary features, such as gaining unity through conversing conceptual plurality, is not made by means of summarizing a substance already subjected to diversity. The principles are not an extract or sediment of our own moral

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<sup>98</sup> Thomas Nagel, "Rawls on Justice", *The Philosophical Review*, vol. 82, no. 2 (April 1973)

<sup>99</sup> Nagel 1973, p. 220

<sup>100</sup> *ibid.*, p. 220

<sup>101</sup> *ibid.*, p. 220

<sup>102</sup> *ibid.*, p. 221

intuitions (which according to Sandel are products of an encumbered self). The principles have a life of their own, being suspended in isolation and having their own intuitionism on which they base their appliance<sup>103</sup>. These are the features that Nagel claims in favour of sustaining the primacy of right as an Archimedean point.

This view would seem easy to subject to Sandel's critique related to the impossibility of having moral primacy without a foundational primacy. But there are two arguments which save this particular interpretation from the correlated features justifying moral primacy. The first is that the principles are not captured within a static frame; as Rawls had also mentioned, they are subjected to change and even more, by means of their conventional (contractarian) nature, they depart from the usual meaning of foundational (they are not primary principles, but themselves are a product of conscience). The second argument is the rupture between the principles' own moral intuition and that of the individuals. There is no direct tie merging between the two. The principles adapt a moral intuition upon clashing with empirical grounds. In this sense I understood their locus as suspended. The restrictions they impose, and together with that, the neutrality claim emerging from these restrictions, are the boundaries which delimit a space of interpretation. They represent guidelines in the sense that they manage a space where individual moral intuitions clash, where the meaning is dispersed and has to be reinterpreted according to the key concepts proclaimed by justice as fairness.

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<sup>103</sup> *ibid.* pp. 221-222

## The Primacy Re-Assessed (Rawls back to Nagel)

In October 1975, in the *Philosophical Review*<sup>104</sup>, Rawls comes back upon the interpretation of the principles of justice, after having faced previous critique from Nagel and Schwartz. Mainly, the critique regarded not the just character of the principles but the just character of the setting used in order to render them. Nagel had questioned how fair are the premises of the agreement that is reached by means of the Original Position. In this he had mentioned two basic features for arriving to a just agreement in what regarded the principles of justice, whose primacy would have been claimed afterwards. In order for the principles to gain primacy and be considered just in the full sense, they require more than justice expressed through their substance. They need to respect a procedural fairness themselves; the process that renders them cannot be biased in any way that may call into question their universal demand.

According to these considerations there are two conditions to be respected by the Original Position: (a) the agreement reached must express a unanimous decision; (b) the parties must be treated fairly upon entrance in the Original Position (the Original Position must itself respect some account of neutrality, rendering an equal opportunity to these parties by not being biased in order to render an outcome that would particularly favour any of them)<sup>105</sup>.

The most important question posed here is whether it is correct for the parties to be blind as to what concerns their particular conceptions of the good. Can they claim fair principles without knowing the ethical space they belong to right after stepping out of the original setting? In answering this, Rawls places the adopted conceptions of

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<sup>104</sup> John Rawls, "Fairness to Goodness", *The Philosophical Review*, vol. 84, No. 4 (October 1975), pp. 536-554

<sup>105</sup> Rawls, 1975, p. 536

the good on the same level as sex, class and race<sup>106</sup>. Knowledge of them is avoided in order not to discriminate; they are just one trait amongst the others.

Three reasons justify their exclusion from this basic setting, all of them plausible according to a claim for neutrality. If allowed entering the original position, conceptions of the good would bring the same biases as any piece of information in a position requiring a decision-setting based on the premises of rationality. They would distort the equal contribution of parties by unbalancing the outcome to favour self or group interest. Further more, these conceptions are considered by Rawls the result of accidental contexts, therefore, they are not relevant for conceiving a neutral account of the Right<sup>107</sup>. The third feature claiming their exclusion is that they represent the very particular conceptions that we seek overriding principles for (there is no point in assessing them, while we want to achieve a concept of right claiming primacy over them). Rawls states that by eliminating them we can arrive at principles decided within a state of reflective equilibrium, principles which are more abstract and belong not only to our own moral intuitions, but also to intuitions in what regards the morality of others. Therefore, these principles do have a base for coherence; they do not appear as disrupted by the simple fact of amending the particular conceptions, for they are based on some account of inter-subjectivity. Also, the method used aims at achieving a formal unity by means of the personal intuition in what regards the moral plausibility, and this is the basic feature in justifying the setting and the claim of primacy the principles shall enact after being agreed upon.

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<sup>106</sup> *ibid.*, p. 537

<sup>107</sup> *ibid.*, pp. 537-539

The Original Position is not a setting stripped of moral meaning. Its morality lies within the concepts governing its finality<sup>108</sup>: the prospect of morality it presupposes inserts a moral dimension to begin with.

Second, the Original Position is not neutral: it is neither the locus of primary neutrality, nor the source of the future one according to an absolute account of neutrality. Rawls will repeat this as a limited neutral vision or outcome in “The Priority of Right and Ideas of the Good”<sup>109</sup> and in *Political Liberalism*<sup>110</sup>. The outcome cannot be of an absolute value, exhausting the conceptual substance of neutrality when from the beginning restrictions are set within the Original Position, and later, this position aims at producing further restrictions to be applied in the social array.

In “Justice as Fairness”, Rawls claims that there can be no talk of fairness among different conceptions of the good, which are not even represented in the Original Position; the highest aim regarding a fair setting would be fairness among persons participating, but even this can be a stretched image, since the Original Position does not operate with any perfect accounts of fairness. What is sought here is an accommodation between a concept and a practice, and the result of this prospect, as the result of a bargain, is only a partial account of fairness, a fairness restricted by an overriding principle, that of consensus<sup>111</sup>.

Out of the critique that Nagel had brought to Rawls, I only emphasized the first point (the one regarding the fair character of the Original Position and its exclusion of morally relevant information, entailed by particular conceptions of the good). I will not address here the individualistic bias that Nagel and Schwartz claim against the

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<sup>108</sup> *ibid.*, p. 539

<sup>109</sup> Rawls 1988

<sup>110</sup> Rawls 1993

<sup>111</sup> John Rawls, “Justice as Fairness”, *The Philosophical Review*, vol. 14, no. 3 (Summer 1985), p. 228

Rawlsian setting. However, regarding this first point of critique, Rawls brings further argument to his answer regarding the exclusion of comprehensive conceptions as detained information in the Original Position and the imperfect fair practice, achieving only partial neutrality. All this chain of restrictions, Rawls argues, is in order to favour the arrival at principles of a well-ordered society. The well-ordered society is the one governed by a political conception of justice, partially neutral in this case. Its restricted or internal neutrality is just a means of securing the good functioning of these principles. A well-ordered society cannot function upon exhaustive premises in what regards comprehensive conceptions of the good, since not all of them can be captured or coordinated by fair principles; not all of them are fit for co-existence. The primacy of Right does not entail a universal claim over all comprehensive conceptions; it can be considered as a guideline only to those conceptions whose moral intuition fits the intuition of the moral principles set in the Original Position. In this way, setting the aim of the process in the concept of a well-ordered society, the concept of Right is procedural, designed in order to constitute and govern a frame of cooperation.

The principles governing the well-ordered society entail a limited account of neutrality. In this sense, neutrality is bracketed and suspended, it is the product of a consensus arrived to in conditions of incomplete information. Due to the incomplete information and the exclusion of knowledge related to comprehensive conceptions, neutrality is a pure procedure. Its functioning is restricted (internal, within the space governed by the conception of justice) and its substance does not run deep into different considerations regarding the comprehensive conceptions within the society.

Neutrality is a prescription, and is justified by a moral intuition, having no comprehensive substance in itself. Neutral features of the well-ordered society,



according to Rawls, regard: (1) the general acceptance of the principles of justice; (2) the permeation of the basic structure of the society by these principles; (3) public acceptance of the method used in order to found the conception of justice; (4) the principles of justice are reinterpreted by the society's members through a sense of justice that each of them holds in respecting these principles; (5) each of the members are entitled to have a conception of the good and are entitled to claims in its virtue; (6) the citizens have "equal respect and consideration"<sup>112</sup> in what regards their contribution in decisions regulating their social life. Basically, all these features can be summarized by the principles of equal liberty and equality of opportunity. All neutrality here is entailed by different interpretations of certain egalitarian standards.

Rawls does not institute equality as neutrality in this sense, but searches for different levels at which inserting an egalitarian standard would render a neutral outcome. However, the use of equality in the service of the neutral account is limited, as Taylor and Kymlicka have proven with their contributions to this debate. At times, the concept of equality has an insufficient appliance, or its substance is not wide enough, in order to cover the entire liberal demand of neutrality.

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<sup>112</sup> Rawls 1985, p. 548

## Chapter III: Emergence of Claims for Recognition

### ***a. Charles Taylor and the Dispersion of Neutrality:***

*“Defining myself means finding what is significant in my difference from others. I may be the only person with exactly 3,732 hairs on my head, or be exactly the same height as some tree on the Siberian plain, but so what? If I begin to say that I define myself by my ability to articulate important truths, or play the Hammerklavier like no one else, or revive the tradition of my ancestors, then we are in the domain of the recognizable self-definitions.”<sup>113</sup>*

Charles Taylor makes a significant contribution to the debate regarding individual rights and their specificity. As he states at the beginning of *The Politics of Recognition*<sup>114</sup>, the claim that introduces identity as a crucial component in rights manufacturing is due to a whole redefinition of a structure that used to be considered the basis of rights. “The collapse of social hierarchies”<sup>115</sup> gives way to a whole new semantics in what regards the individual.

The debate regards mainly the possibility of achieving a legitimate basis for law and regulated interaction among agents coming with different cultural backgrounds. For multicultural societies this is a current disputed issue facing practical matters like their institutional design, the making of an appropriate Constitution, the achievement of a general consensus on which democracy and citizenship can be legitimately established upon.

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<sup>113</sup> Taylor, *The Ethics of Authenticity*, Harvard University Press, Cambridge, Massachusetts 1991, pp.35-36

<sup>114</sup> Charles Taylor, “The Politics of Recognition”, *Multiculturalism*, ed. Amy Gutmann, Princeton University Press, New Jersey, 1994, pp.25-75

<sup>115</sup> Taylor, 1994, p.26

## Re-originating Neutrality: the Ideal of Authenticity

Taylor starts off his claim for recognition on a switch in human ideals. The switch he makes departs from the right to human dignity and asserts the ideal of authenticity. This is a new claim regarding one's capacity to stay true to himself, while having a supposed internalized image. His background and his surroundings are influences on this image, thus recognition is a crucial factor in maintaining the image as clear as possible.

The ideal of authenticity regards the process of forming one's identity. Taylor drops the thesis where this identity is viewed as purely independent from external factors, and argues that our identity is tightly connected to our culture. Even departed from our country, family and culture, this identity, formed in the previous years, remains characterizing our internal image of ourselves.<sup>116</sup> Thus, arriving in a multicultural context, depreciation or misrecognition of it can cause us great pain, forcefully intending a breach between whom we are and who we are seen to be.

The *politics of recognition* are the intended solution for the maintenance of this ideal of authenticity. Taylor opposes them to the previous demands of liberalism in what regards human rights. He builds an antithesis between universal rights stated by liberalism, which hold on to the ideal of equality, and *politics of difference*<sup>117</sup> which state that there is no universal standard but a procedure which claims recognition and equal value to all distinct identities.

The claim of universal rights, under accuse of difference-blindness, assessed rights based on human equality. Equal right to human dignity served as a basis for its demands. The *politics of recognition* question the very substance of equality that

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<sup>116</sup> *ibid.*, p.33

<sup>117</sup> "Where the politics of universal dignity fought for forms of non-discrimination that were quite <blind> to the ways in which citizens differ, the politics of difference often redefines non-discrimination as requiring that we make these distinctions on the basis of differential treatment."  
*ibid.*, p.39

liberalism had rested its rights upon. There is no universal standard, and there is no other equality except the equal worthiness of distinct conceptions of the good. I would like to state here in order to be able to develop my argument later: the equal worthiness claimed by Taylor, requests in itself a universal judgement of value.

I shall go back now to Taylor's description of the process of forming identities, this being the very origin of the identity which shall later become subject to recognition. He sustains that the way we define our identity has a profound dialogical character<sup>118</sup>. As opposed to monological, a process in which we would be our own guides, the dialogical character imposes on us the interaction with "significant others"<sup>119</sup>, which intervene on our inner substance and modify its image. Taylor argues against the monological ideal, according to which we should struggle to fight relationships based on dependency, stating the value of shared goods that can only be experienced through a dialogical experience. He takes this thesis as far as to affirm a dialogical affect on our rationality and understanding; there is a particular discourse that makes sense only pressed upon a dialogical background.

"(...) discovering my own identity doesn't mean that I work it out in isolation, but that I negotiate through dialogue, partly overt, partly internal, with others. (...)My own identity crucially depends on my dialogical relations with others."<sup>120</sup>

Taylor presumes that our identity, while being internalized (we have carved within the image of ourselves) carries with it a moral baggage. What is moral is not anymore to be decided upon an external instance, but our inner voice has a moral discourse of its own.

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<sup>118</sup> *ibid.*, p.32

<sup>119</sup> concept extracted by Taylor from George Herbert Mead, *Mind, Self and Society*, (Chicago, University of Chicago Press, 1934)

*ibid.*, p.32

<sup>120</sup> *ibid.*, p.34

“(...) each of us has an original way of being human: each person has his or her <measure>”<sup>121</sup>

The acknowledgement of the inner measure<sup>122</sup> erases the established account of morality as an externally appreciated standard. The inner voice cannot be brought to silence as long as it has a moral discourse. Appeals made for it to conform or to borrow an artificial discourse in this sense makes a similar crime to that of not recognizing the difference.

The main thesis here, that goes back and makes a strong demand for recognition, is that none of the external existing models is fit to develop one's identity. The only model and path to be followed is the one he finds within, mirroring the inner image and being true to himself.<sup>123</sup> None of the other ways can be fully assumed by one with an already developed inner voice. Two ideals come into dispute when trying to continue the inner voice with a different external conception: what was thought to be a universally applicable standard confronts the inner discourse causing pain and forcing an unnatural breach. This unnatural breach is a breach of the upheld ideal of authenticity<sup>124</sup>.

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<sup>121</sup> *ibid.*, p.30

<sup>122</sup> Taylor takes the concept of an existing “measure” for everyone from Rousseau, who is, in his belief, one of the first to bring about the turn-over caused by authenticity.  
*ibid.*, p.29

<sup>123</sup> *ibid.*, p.30

<sup>124</sup> Taylor makes the connection between recognition and authenticity, arguing the crucial role that recognition plays in regard to this ideal. This argument follows from his previously stated dialogical character that we maintain active; in order for the dialogical character and authenticity to coexist, there need for a bridge made by recognition.  
*Ibid.*, pp.36-37

## **Equal Consideration to Equal Worthiness: An Abuse of the Egalitarian Claim**

I have mentioned earlier the importance of egalitarian standards in what concerns finding a proper locus for neutrality. In this tiring search the concept of equality serves as a beacon, as an intermediary for the neutrality claim. Neutrality is constantly sought for under the disguise of a renewed egalitarian relation. According to these considerations, it seems that most authors interpret neutrality as a concept extracted out of the entire realm described by the egalitarian relations. Therefore, neutrality asserts itself as a number of egalitarian standards applied to certain dimensions, in view of various considerations considering the spaces where such a claim serves an ideal of political fairness.

Considering that equality itself describes a quantitative relation, closely tied to a field of measurement, equality entails restrictions. Emphasizing the neutrality claim can be understood as searching every time for dimensions to which an applied egalitarian standard can run deeper underneath the surface. Considering various conceptions of the good, the Rawlsian account of neutrality rendered them equal standing and equal claims, as long reunited under a set of procedural principles of justice. This view, however, is not considered as satisfying the neutral claim by Taylor. The egalitarian relation is set to close to the surface, acknowledging existence and permitting claims is seen to restrictive for agents claiming justice according to an ideal of authenticity. The principle is too passive in this sense to satisfy its demand. Taylor's view of a proper setting for just principles requires more than rendering a procedural account. The principles must not simply acknowledge the existence of various conceptions and integrate them into a wider scheme of cooperation. The principles must assess themselves not through prescription or passivity, they must rely

on a dialogical approach, cutting deeper in the substance of various comprehensive conceptions and spotlighting their substance according to a claim for recognition and worthiness. Justice is not allowed to uphold from judgements of value; its ability to make them can serve the achievement of greater neutrality. However, in order to remain neutral, justice must also do so in an egalitarian manner. And from here Taylor draws his solution in the form of a claim for equal worthiness.

Acknowledging and recognizing comprehensive conceptions as such (according to an ideal of authenticity), justice must render them equally worthy. This claim is however a high demand if it thought according to the classical pattern of neutrality. More than high, such an account of neutrality is impracticable, because, while trying to cut deep beneath the surface of labels and render identity as a value not in itself but, intermediated through recognition, as a public asset, valued equally, it arrives at a point of logical incoherence. Maintaining this line, and thus arguing for equal worth of different cultural entities, would require a neutral standpoint to operate the judgement of value. While aiming this high however, the theory also provides a restriction, assumed as justification, but transformed into a logical obstacle when considering its accomplishment: the ideal of authenticity. I shall try to render this rupture in Taylor's theory, using Maeve's Cooke critique over the ideal of authenticity and Taylor's claim.

Maeve Cooke makes a distinction between a weaker and a stronger formulation of the politics of difference in criticizing Taylor<sup>125</sup>. He argues that Taylor's weaker formulation simply regarded "the equal potential of every individual (or culture) to form and define his or his own identity"<sup>126</sup>. Cooke states that this particular demand does not justify Taylor's critique on blind liberalism. While the latter sustained a

<sup>125</sup> Maeve Cooke, "Authenticity and Autonomy. Taylor, Habermas, and the Politics of Recognition", *Political Theory*, Vol.25, No.2 (April 1997), p.261

<sup>126</sup> Cooke, 1997, p.261

politic of equal dignity, the equal potential can very well be interpreted as another dimension of equality in rights, thus requiring no appreciation of value or worth. The further requirement made by Taylor, that everyone should be free to determine his own view of a good life, does not yet imply judgements of value.

The key to Cooke's critique over Taylor's claims is the comparison between autonomy and authenticity, and the distance one must go in order to surpass the first concept and have stronger demands that concern the latter. In his view, the weak formulation, regarding a potential to develop/determine freely a conception of a good life does not cross the limits set previously by liberalism in what regarded individual autonomy. In this particular claim, the universal rights are in no way conflicting with the demands of recognition, what is demanded to be recognized is a right already stated.

Moving further on with Cooke's critique, at the point where he reaches the strong formulation of the politics of recognition, that is the *politics of difference*, Cooke looks closer at the way Taylor conceptualizes the required recognition for difference<sup>127</sup>. He argues that his conceptualizing does not necessarily lead to the connection Taylor makes with the ideal of authenticity, which formed the only legitimate basis for a recognition based on worthiness and value. Identity distinctiveness does not assume that every identity has a unique and therefore authentic character. According to Cooke, "distinctiveness in itself is not a moral ideal; only a certain kind of distinctiveness is worthy of recognition"<sup>128</sup>. He further argues that in order to turn distinctiveness into a moral good, further judgements are necessary. He sees two ways of operating these judgement: the first denies both ideals, autonomy and authenticity, making the judgement in a sphere which is not

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<sup>127</sup> *ibid.*, p.261

<sup>128</sup> *ibid.*, pp. 261-262



subjected at all to individual wills; the second states the individual will as a judge, but reaches a problematic scale in what regards the assessment of value.

I will describe this second type of judgement, as this is, in my opinion, one of the strongest criticisms that can be brought to Taylor, and a critique I wish to assess myself. Cooke states: “there can be no objectivity in judgements of this kind, the value of each person’s identity and life may be deemed equal”<sup>129</sup>.

Cooke’s main thesis is that ethical evaluation requires context-transcendent standards. Denying this fact, renders meaningless both previously stated ideals (autonomy and authenticity). The question is how one can affirm equal worthiness while one assumes uniqueness of every conception of the good that the individuals are embedded in. Where do we find the grounds to operate our judgements of value if our values are rendered incompatible, or simply cannot stand universal ranking? If no one can surpass the condition rendered by the comprehensive doctrine he is a member of, who shall assess the equal worthiness, especially in moments when such doctrines are conflicting? Thus, in order to render valid Taylor’s argument, a neutral ground for judgements of value must be found, and Cooke interprets this as a “context-transcendent”<sup>130</sup> standard. He also proposes two solutions, arguing for them as “aspects of <post-conventional> ethical validity”<sup>131</sup>. He finds his source of judgement in the post-conventional self which can state three reasons in this justification: a. “that she is acting autonomously”<sup>132</sup>; b. that the actions are right according to standards of evaluation that are neutral to personal will and desires; c. that the actions are

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<sup>129</sup> *ibid.*, p.262

<sup>130</sup> *ibid.*, p.263

<sup>131</sup> *ibid.*, p.263

<sup>132</sup> *ibid.*, p.264

authentic, maintaining the subject true to himself, while authenticity is also judged upon context-independent norms.<sup>133</sup>

Cooke sees these three aspects as the only possible alternatives that could be brought to Taylor's defence. However, while the first is merely assessing autonomy, the second and the third are again problematic. He sees the second one as running again into the sphere of autonomy. While presuming a normative standard for judging the difference between right and wrong, the individual cannot acquire such neutral standards in a post-conventional world. The state standards are not neutral either. Therefore, the only argument that can be brought here for the upholding of such judgements is again that of autonomy. Such standards are presumed by the individual by virtue of his right for autonomous self-governance.

The third aspect asserts the ideal of authenticity. Applying ethical evaluation to the expression of this ideal, we run again into problematic grounds. The inner self and the associated voice can not be assumed as being right or wrong, for they are deeply subjective. Thus, a critical evaluation of one's inner voice is rendered impossible. Cooke says that in order to make this evaluation possible, the voice within must pass through a "guidance of reflective judgement"<sup>134</sup>. However, passing through this guidance, the voice within shall still be guided by a contextual ethics. Thus, the self is viewed as unreliable in what regards "an evaluative standard providing a basis for public recognition"<sup>135</sup>.

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<sup>133</sup> *ibid.*, p.264

<sup>134</sup> *ibid.*, p.265

<sup>135</sup> *ibid.*, p.266

## ***b. Debating Recognition***

### **Consequences of Cooke's Critique to Taylor**

Considering all of the arguments that Cooke makes in his critique to Taylor's conception, I shall argue further on about the consequences of such an assessment. I argue that:

1.The combination between the partial compatibility of recognition and autonomy stated by Cooke and the breach between ethical judgement and the ideal of authenticity, leads to a state of atomistic individualism. The critique that can be thus brought to Taylor has much more ground than the critique concerning atomism that has been made regarding Rawls' conception of neutrality.

2.The key in maintaining a balance between breaking ideals of authenticity and preventing the individual atomism consequence lies in tolerance, the pure value of inter-subjectivity and the way we value others, apart from who they are. Thus a value of plurality in itself (I shall argue here two values, the first rendered by Nancy, the second by Habermas and Kymlicka) overpasses the gaps caused by the ideal of authenticity.

1. As seen above, autonomy as a shared universal value states everyone's potential of developing and living according to a certain conception of the good (be it individual or communitarian). Further on, assuming the ideal of authenticity means that everyone must act according to an internalized voice, while agreeing on the non-existence of an ethical standard to be imposed upon the discourse of such 'inner voices'. Supposing that both conceptions are valid and legitimate, we achieve an impossibility of having an objective connection or consensus upon any standards of living. The dilemma we stumble upon here is the same that Cooke had noted, in regard to authenticity. If uniqueness is argued, this dilemma cannot be solved

anymore, as the only key to the authenticity claim remains the inner voice of the individual. Given as unique, this voice, and the pursuit of its discourse as a unique discourse would trap the individual in a world of solipsism.

The accuse of inducing individualistic atomism has also been issued against the impact of Rawls conception of law neutrality in what regards cultural development. Here, the claim had been made on much weaker grounds, stating that assuring individual's autonomy in what regards cultural choice inside the "cultural marketplace"<sup>136</sup>, is inducing a belief that "judgements about the good should be made by isolated individuals"<sup>137</sup>. Autonomy functions as a safeguard here, insuring the individual capacity of free choice of cultural preference. However, this claim, thoroughly commented upon by Kymlicka, is very different from the ideal of authenticity stated by Taylor.

The difference lays in the very conception of law neutrality. Rawls' conception of law neutrality is based on forging a political conception, through consensus, a conception which is in no way similar to any comprehensive conception of the good. The only remnants of comprehensive conceptions that penetrate the political doctrine are subjected first to consensus and, consequently, they become themselves part of the political virtues. Furthermore, even if autonomy is asserted in what regards free pursuit of conceptions of the good, the political frame does not tolerate all such conceptions<sup>138</sup>.

The key to all selectiveness involved in Rawls' conception of neutrality is his achievement of 'context transcendent' standards, the ones that Cooke required; they

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<sup>136</sup> Term introduced by Kymlicka in order to describe the relation between individual autonomy and cultural choice, against a background of cultural pluralism.  
Will Kymlicka, "Liberal Individualism and Liberal Neutrality", in *Ethics*, 1973, vol. 99, no. 4, Jul 1989, pp. 883-905

<sup>137</sup> Kymlicka, 1973, p.896

<sup>138</sup> John Rawls, "The Priority of Right and Ideas of the Good", in *Philosophy and Public Affairs*, vol. 17, no. 4, Autumn 1988, pp. 252-253, 264-268

are prior set by the concept of right expressed in the political conception. Therefore, considered from the point of neutrality requirements (the ones stated by Rawls: procedural neutrality, neutrality of aim, neutrality of effect), the political conception must be viewed from two dimensions. From outside, the conception fails to meet all three accounts of neutrality, from inside, considering its sphere of action, and the conceptions of the good that are regulated by it, the political conception aims to be and can be considered neutral.

What can first be argued against the accuse cast on Rawls', of atomistic individualism, is his argument, and a basic feature in Political Liberalism, that the political conception is a good in itself<sup>139</sup>. Furthermore, the political conception is the expression of right within the society; it has its own virtues that are reached through consensus and collectively assumed by members of the political community. Thus, even if the sharing of a comprehensive conception is no universal feature, the individuals in the Rawlsian community still share a common good, that is the political conception.

In order to summarize the difference between Rawls and Taylor, I shall again refer to the argument made by Cooke and the context-dependent/independent criteria for evaluation. In Rawls' "The Priority of Right and Ideas of the Good", the problem of context-independent means of evaluating the right and wrong is solved. There are several aspects rendering this view, the main one being the fact that the right is placed prior to any comprehensive conception of good, thus is deliberately extracted from context-dependency. Furthermore, the political conception is constructed on a selective basis in this respect; its goal is to achieve a constitutional structure for a regime bearing the attribute of fairness. Thus, the political conception endorses a

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<sup>139</sup> Rawls, 1988, p.270-271

citizen ideal, an ideal of freedom and equality, an ideal of achieving public values and assuming public virtues<sup>140</sup>. All conceptions who do not find space inside this delimited space are sacrificed in the process of selection, for they cannot face the procedural ideal of the political conception. Although neutral in respect to comprehensive doctrines, the political conception endorses values in order to achieve its procedural aim<sup>141</sup>.

As opposed to Rawls, where the problem of evaluating right and wrong is solved by a procedural conception, the *politics of recognition*, although they could similarly be argued a good in themselves, hold no reference to an ethical background. Rawls' ethical background is not a comprehensive one, but is diluted in the procedural account. Thus, it is ethical because it aims at achieving a functioning conception. The same could not be argued for Taylor, for it's the very concept of functionality that poses problems once the demand for equal worthiness is made. The ideal of authenticity does not leave room for any sacrifice or selection to be made, once equal worthiness is stated. Thus, the equal worthiness implies that the right in Taylor's conception is purely context dependent.

The lack of a common ethical ground in the *politics of recognition* can cause even greater damage than atomistic individualism, for the conception endorses no account of functionality. Even if aimed at achieving a substantial equality in rights, the conception can be claimed illegitimate, considering its incapacity of rendering a functioning and self-sustaining outcome<sup>142</sup>. Against the background of lacking any context-independent means of evaluations, the same problem arises as Cooke had

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<sup>140</sup> *ibid.*, pp.268-269

<sup>141</sup> *ibid.*, pp.267-268

<sup>142</sup> Cooke theorizes as the argument of "functional difference", stating the incompatibility between the politics of difference (claim of authenticity) and all arguments that would imply judgements of value, including the claim of equal worthiness that Taylor makes. Cooke, 1997, p.268

mentioned: all preset ideals (autonomy and authenticity mainly) lose their value for they are not consistent with a universal standard, while all conceptions are equally worth (thus there is no universal standard) and there might be conceptions which hold no such values. The ideals inevitably crash against each-other.

In order to avoid this aspects of contradictions, Rawls had presumed individual features which must be maintained active, features such as responsibility and self-discipline, which would not render individuals as “passive carriers of desires”<sup>143</sup>; individuals form their ambitions “in the light of what they can reasonably expect”<sup>144</sup>. There is a weight that overrides the “strength or intensity of their wants and desires”<sup>145</sup>. In this view, according to Taylor, Rawls’ might be viewed as breaking the ideal of authenticity, but as opposed to Rawls, the ideal of authenticity is a claim impossible to be made.

2. My second argument regarding the dilemma induced by the ideal of authenticity and the supposition of equal worthiness regarded the concept of tolerance. The concept of tolerance is avoided for the fact leaving room to misinterpretations regarding power relations, in the sense that there must always be a higher instance in such a relation; the one who tolerates is always above the tolerated. This assumption would clearly deny Taylor’s claim of equal worthiness, for if there were such thing there could be no universal concept of tolerance. But, I argue that there can be a different interpretation of tolerance, one that is milder, in the sense that it establishes no universal higher instance and that can be justified according to Taylor’s claim of authenticity.

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<sup>143</sup> John Rawls, “Social Unity and Primary Goods”, in *Utilitarianism and Beyond*, ed. Amartya Sen and Bernard Williams (Cambridge, Cambridge University Press, 1982), pp.168-69; extracted from Will Kymlicka, “Liberal Individualism and Liberal Neutrality”, in *Ethics*, 1973, vol. 99, no. 4, Jul 1989, pp. 885

<sup>144</sup> *ibid.*

<sup>145</sup> *ibid.*

The claim of authenticity assumes our principles of evaluation are context-dependent upon our own conception of the good. According to these (possibly, but not necessarily, unique<sup>146</sup>) standards we assume that while being true to ourselves we assume the only possible model<sup>147</sup> that there is to be assumed by us.

“Morality has in a sense a voice within.”(...)“What I am calling the displacement of the moral accent comes about when being in touch with our feelings takes on independent and crucial moral significance.”<sup>148</sup>

Thus, while having assumed that there is only one such moral discourse that is valid for us, and this discourse comes, through the ideal of authenticity, from our voice within, it becomes clear that any further appreciation that we are to make about things in the outside world considers this voice as prior and superior to any other instances.

However, no one states that while there is only such an evaluation standard, this standard does not include our appreciation of others, even our positive valuing of them as persons. I argue here that this evaluation can only be made through ‘misrecognition’ in the conditions given, for, according to the previous critique, we hold no possibility of a judgement of value according to which we would render their conceptions as equally worthy to ours. Thus, while we are embedded in our personal conception of good, we can only acknowledge others according to the attributes we render through the valuing process. According to this weak interpretation, we always tolerate others. This version is compatible with the *politics of difference* and with Taylor’s assertion about the ‘significant others’ in our lives. They are significant

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<sup>146</sup> Cooke’s appreciation of the difference between distinctiveness and uniqueness: Cooke, 1997, p.261

<sup>147</sup> “I can’t even find the model by which to live outside myself. I can only find it within.”

Taylor, 1994, p.30

<sup>148</sup> Taylor 1994, p.28



while modelling our identity and they remain significant while our identity is formed and we perceive them as different.

The next point I want to make is that misrecognition and the ideal of authenticity are not necessarily two contradicting accounts. While both of them are given, there is still a space between them in which our relating to others can be valued. We can be inclined, and as Taylor also argues, we always are, to relate to others. Therefore, the fact of our relation to others has a value of its own, inter-subjectivity can be valued for itself. This value can be incorporated differently according to particular conceptions of the good, but the account remains effective inter-subjectively. This account represents the path to our political management of the process of recognition and rendered rights. All theories demanding deliberative spaces and consensus are based upon such an independent value that the very fact of a plurality assesses.

According to Jean-Luc Nancy, the individual can not be dissociated from the very fact of plurality. The two concepts are fundamentally inter-related. The creation of a political conception can rest of this very fact, of valuing plurality as an intermediate between the individual and the common political way of being<sup>149</sup>.

Nancy goes further on, asserting that the notion of individual and plurality has a symbiotic relation, in the sense that they are co-extensive. This theoretical construction is funded upon the right to existence of both terms: both individual and plurality. Given the fact that they are co-extensive, the balance between them has to be kept in order to support their existence. Upon this argument, Nancy builds a third concept, that of a common, shared being.

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<sup>149</sup> Ciprian Mihali, „Către o filosofie a sensului” (“Towards a Philosophy of Meaning”), *Dreptul la filosofie. Experiențe de filosofie contemporană* (*The Right to Philosophy. Experiences of Contemporary Philosophy*), Ideea, Cluj 2004, p.110-120

The collapse of social hierarchies that Taylor mentioned causes a redefinition of the sense of community and plurality, one that is compatible with our “post-conventional” ideals, such as the ideal of authenticity. “How can we say <us> when no leader, not even God, can say it any longer for us and in our place?”<sup>150</sup>

Nancy integrates in this theory those conceptions which do no longer incorporate a concern for the other, like the Christian religion did. He assumes an account of plurality independent of any comprehensive conception. “The desire to say <us> has nothing sentimental or familial or <communitarist> in it; it is just a minimal condition in order to be able to say I.”<sup>151</sup> Nancy assumes the same lack of resemblances to other conceptions, as Rawls did when theorizing the political conception.

Conserving singularity, and therefore authenticity through the concept of plurality translates into the self-preservation instinct of the individual, actualized by the means of community. The “fact of being together”<sup>152</sup> is a median space of an antinomy, a space which represents the only solution for sustaining the political form. Politics in this sense remains just a gesture (a procedural account in the Rawlsian interpretation) of connecting singularity and uniqueness. Their unity consists only in a constitutive tie through which they communicate.

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<sup>150</sup> translated quote from <sup>150</sup> J. L. Nancy, *Etre singulier pluriel*, Ed.Galilée, Paris, p.28

<sup>151</sup> quote translation; original quote in: Mihali, 2004, p.118

<sup>152</sup> Central motif in Nancy’s conceptualization of *l’etre singulier-pluriel*. The motif asserts an intermediate between plurality and community, a community which surpasses all particularities and which affirms itself through the very necessity of the fact of being together.

## Habermas' interpretation of Taylor's claim: "Struggles for Recognition"

Nancy's contribution is similar to what Habermas conceptualized as the equiprimordiality of the private and public autonomy. "The color-blindness of the selective reading vanishes once we assume that we ascribe to the bearers of individual rights an identity that is conceived inter-subjectively. Persons and legal persons as well, become individualized only through a process of socialization."<sup>153</sup>

Habermas' main argument here is that a justifiable politics of recognition that assures the individual with the proper space in which his identity is formed (the public space). For Habermas, autonomy is the answer as well, but this autonomy must be pressed against a constantly actualized background in what regards existing rights. The state is viewed as a public arena, a space for deliberation, according to the democratic character. All judgements of value can be done through this process of deliberation and the state has to assure that every faction is given a voice in this process.

Habermas makes, however another important distinction. The problematic remains of this process of deliberation and rights achievement are only regarded through the juridical difference between *de jure* and *de facto*. Some rights may be regulated and still misinterpreted when granted<sup>154</sup>. Habermas claims a tradition of interpreting a certain right can harm its appliance, giving the example of feminist rights, who had opposite effects as to those intended. Social welfare interventions on the status of the feminine gender achieved a continuing harm in women's status instead of assuring equality. Habermas calls this particular version of interpretation

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<sup>153</sup> Jürgen Habermas, "Struggles for Recognition in the Democratic Constitutional State", in *Multiculturalism. Examining the Politics of Recognition*, edited by A. Gutmann, Princeton: PUP, 1994, pp. 113

<sup>154</sup> Jürgen Habermas, 1994, pp. 114

“social-welfare paternalism”<sup>155</sup>, as it is still attached to tradition and enhances the perpetuation of women/male stereotypes.

In what concerns ethics and its transparency into the law, Habermas states that it is impossible to have a normative conception that is equally good for everyone, given different conceptions of the good. Instead he proposes a middle-way of compromise; by illustrating the capacity of absorption of that the rational process of law-making has, in what regards differentiated ethical stands. By having a “broad spectrum”<sup>156</sup> entering this process, ethical reasons are assured a place in the filtering process. However the result rendered is merely a compromise, reached under fair negotiations. The point that is to be made here is that the legal procedure is not blind to ethical reasons, nor does it embrace a unique ethical view, given differentiated conceptions among the citizens. Thus, the system is permeated by ethics.

Once Habermas manages to state this ethics-related permeability of the system, the weights in the dispute change, because now there is only the question how far does this permeability go and how many views can be incorporated as complementary or coexistent within a legal frame? Could this thesis be acceptable in a country with fundamentally opposed religious platforms?

Habermas has a gradual view of ethical permeation. He argues that communities are dynamic and, thus, their ethical views do not remain intact over the years. The shifts in public discourse might solve themselves a big part of the problem of recognition. However, if the difference is impossible to override within a society, when there is a strong resistance of the system to be permeated by a certain ethic or the system is unable to uphold and manage contrasting ethical aspects, the solution remains self-determination. In this point, Habermas moderates the democratic aspect,

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<sup>155</sup> *ibid.*, p.115

<sup>156</sup> *ibid.*, p.125

which would have continued operating the problem through the mechanism of majority. Identity is a fundamental feature, in deep relation with integrity; thus, the problem of overriding identities cannot be legitimately posed, not even in the obscurantism that the majority procedure renders. He chooses to continue on the path of compromise and selective policies within a system, as long as these applications are possible.

The alternate solution of self-determination remains to be embraced by those communities who do not feel that they can achieve a correspondent political status within a political frame, dominated by a majority as a standard of alternate ethics<sup>157</sup>. The problematic deepens when alternate ethics equals altered ethics from the minority's point of view. The need for recognition in this case is manifested through the path that the community uses in order to start off the process of emerging a new-nation state. However secondary harmful effects this process might have, the right of self-determination cannot be denied, considered from the angle of ethical justification and identity correspondence within enacted policies.

Habermas's final argument comes against Taylor's distinction between liberal rights and rights for recognition. While Taylor had enhanced the meaning of rights for recognition as an over-determination factor, taking over the liberal 'universal' perspective, Habermas shows a subsidiary understanding of the politics of recognition. In his view, completely validating, from a normative angle, a policy for recognition as a primary focus on individual rights, would enable a static view over society itself<sup>158</sup>. Enabling a policy for recognition requires labelling and according legal status to platforms that are changing their place within the societal frame and, even more, changing their substance according to particular dynamics. Engaging in

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<sup>157</sup> *ibid.*, pp.126-28

<sup>158</sup> *ibid.*, pp.128-135

the project of politics of recognition cannot overcome the relativism that the societal frame is subjected to. Taking in count this factor of change, the politics of recognition can be misused to serve as cultural antidotes against a relativist trend, which affects cultural platforms directly. Opposing the minority's view the majority's status, Habermas notices no difference in this respect between the two. A majority cannot survive unless it counteracts changes through a flexible policy. Thus, if fear from relativism serves as an argument for enhancing recognition, this argument would not hold a comparative analysis which regards change within society as a natural, unstoppable process. A normative frame to prevent the effects of this process would mean interfering with the "cultural marketplace"<sup>159</sup>, as Will Kymlicka puts it. The place for deliberation over this subject is the society itself, which, as a space framed only by the universal liberal rights, does not stop individuals or platforms from engaging in deliberative sessions about the compatibility of their goals or conceptions of the good.

## Preliminary Conclusions

Regarding the possibility of operating the judgement of value that would render the requirement of "equal worthiness" stated by the politics of recognition, Cooke made this point as clear as possible: the claim of equal worthiness and the ideal of authenticity according to a politics of difference are incompatible. No judgements regarding the regulation of certain standards can be made unless we achieve a

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<sup>159</sup>Kymlicka uses this concept in order to describe society's capacity to negotiate and approach the differences within its informal space and the public sphere as the appropriate place for deliberation, as opposed to the interventionist view which would require the state as a guardian and patron of official cultures. Applying the economic concept of free market to cultural competition, Kymlicka achieves a fair image of the societal dynamics in what culture is concerned. He works against the myth of 'established cultures', rendering a view that illustrates cultures as non-static entities which change from within and as a result of interaction. Cultural marketplace does not render a cultural chaos, simply a space of informal accordance of co-existing cultures.

Will Kymlicka, "Liberal Individualism and Liberal Neutrality", *Ethics*, Vol. 99, No. 4, July 1989.

context-independent means of evaluation. Furthermore, the radical claim of distinctiveness dissolves the very base that assured the equal right to pursuit distinct conceptions. The concepts of autonomy and authenticity loose meaning in a space where all meaning has a totally relative interpretation. Therefore, the authenticity claim must be moderated.

There are further reasons to moderate this claim, as the ones stated by Habermas, that the individual does not achieve particularity unless given the autonomy and the space characterized by plurality in order to operate a choice upon a reasonable amount of information. In this view, recognition has an external value, as to render an option. This valuing is purely for cognitive purposes, it has no intrinsic value, that comes to meet the ideal of authenticity.

If stated to the fullest account, the ideal of authenticity itself constitutes a social breach. For an authentic discourse, presumed unique, cannot be translated in no other proper voice, therefore it cannot be recognized (due to a cognitive incapacity) and it cannot be valued in the public sphere, as substance for exercising autonomy in cultural choice, due to the same reasons.

When politically valued, therefore, recognition must function on a previously set basis, that is neutral, and thus, inauthentic. The inter-subjective relation must be valued therefore previously to recognition of worthiness. This particular account can be found in all presented alternative theories: Rawls, Nancy and Habermas. Kymlicka mentions it as well, but it does not make it a compulsory political requirement. Deliberation and inter-relations can be freely exercised in the public sphere; they do not necessarily need a frame guaranteed by the state. More important than the place where deliberation actually takes place or where plurality is first valued, is the fact that this represents a natural tendency in any identity forming process. Any

conceptions which come against such character cannot be considered, according to the authenticity ideal, as equally worthy, for they do not support a common scale of interpretation and deliberation. They do not take legitimate part in the *cultural marketplace*, for they are not exercised upon the presupposition of freedom, therefore, they enforce themselves.

In the end I would like to state the particular reading that both Kymlicka and Habermas make of the politics of recognition. Not interpreted through the ideal of authenticity, but through that of autonomous choice, politics of recognition ceases to be as Taylor had stated, a vital fact for the community or individual according to the authenticity requirement. Recognition in this case remains a vital fact for the pure conception that aspires to it; recognition as actualization, equal worthiness as equal right to be kept alive. This reading is best understood through Kymlicka's concept of cultural marketplace, where not individuals, but cultures fight for existence. The politics of recognition becomes a safeguard for cultures one their way to extinction. The value claimed is based on the ideal of individual autonomy; the cultures must be artificially sustained in order to form a proper variety for individual choice. Viewed as such the claims for recognition give up the claim of equal value or worthiness in respect to authenticity, while they re-enter the sphere of individual autonomy in order to be justified.

There are certain aspects rendered by this reading that are not completely compatible with the authenticity statement made by Taylor. Autonomy is granted and the cultural offer must be kept as wide as possible for the individual can operate a free choice, and even exchange between cultures. The authenticity requirement can only be kept valid only if we render priority to autonomy in this sense. Authenticity can thus become not a universally valid claim but one that must be limited by the



exercise of autonomy and can even be temporarily limited by the individual himself, in relation to his current adoption of a certain conception of his choosing.

## Conclusions: Finding the Neutral Setting

### *Unifying Threads: Addressing Rawls and Taylor*

#### **Jürgen Habermas & the ‘Struggles for Recognition’<sup>160</sup>**

Habermas criticizes the need felt by Taylor to make a harsh distinction between Liberalism 1 (sustenance of autonomy and individual rights, accused of difference-blindness) and Liberalism 2 (politics of recognition)<sup>161</sup>. His claim towards a moderated view that levels both demands rests on the fact that “public and private autonomy are equiprimordial”<sup>162</sup>. In this view, citizens hold autonomy according to a system of laws which they themselves conceived.

Habermas’s democratic solution argues that there is no constitutional state without democracy and, in particular, sustains an identity relation that is enacted by democracy itself. His solution for the struggle of rights does not imply the necessity of complete switch in perspectives. His solution emphasizes the fairness and the dynamics of a public discourse held within the deliberative frame of democracy. If this discourse manages to respect certain norms, as to allow both individuals and groups to claim specific rights, then an identity relation can be established between the subjects and the laws enacted (and the rights correlated with this framework as well). In order to emphasize this view, Habermas paraphrases Dworkin, in saying that rights can only be trumped by rights, and this process in the long run establishes a certain levelling of claims, as well as a representation of the public demand, captured by the legal frame. Therefore, the system shall not be neutral, nor based on a certain

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<sup>160</sup> Jürgen Habermas, “Struggles for Recognition in the Democratic Constitutional State”, in *Multiculturalism. Examining the Politics of Recognition*, edited by A. Gutmann, Princeton: PUP, 1994, pp. 107-148

<sup>161</sup> *ibid.*, p. 123

<sup>162</sup> *ibid.*, p.113

conception, but permeated by certain traits which are transmitted from the public sphere into the system of laws.

Considering a strong enactment of the politics of recognition, one that would require the equal worthiness of all cultures and would enact state policies in this respect, disregarding cultural dynamics or rates of adherence (thus, disregarding the representative dimension of cultures within society, viewing cultures as ends in themselves), Habermas argues for a democratic context again. Especially, he argues for the dynamics and flexibility that characterize the democratic frame and for allowing all decisions to rest on the pure means of democratic representation. This frame does not encourage artificial assistance given to static forms of life or dying cultures. Representation sustains exactly the opposite; its aim is re-actualizing a legal frame according to shifts within the social array. Thus, the course of development or regression that cultures face is dependent on individual autonomy and the individual's capacity of representing an end within the public sphere.

"Legal guarantees can be based only on the fact that within his or her own cultural milieu each person retains the possibility of regenerating this strength."<sup>163</sup>

## **Will Kymlicka**

While evaluating the neutrality debate, considering both communitarian arguments, as well as the liberal point of view, Kymlicka sets out following a parallel between state perfectionism and liberal neutrality. His aim is the liberal ideal of a culture of freedom<sup>164</sup>, but he does not see the conception of liberal neutrality as fully providing safeguards for this aim. Liberal neutrality, as exposed by the Rawlsian conception, may provide the means towards such an achievement but it leaves behind many uncorrected biases which erase the possibility of autonomous choice and free

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<sup>163</sup> *ibid.*, p. 132

<sup>164</sup> Kymlicka, p. 899

expression on a whole new dimension. Kymlicka connects the means provided and the biases left behind in formulating the concept of the cultural marketplace. This concept is a direct expression of liberal neutrality, with an inclination towards suspicion of breaching the consequential account. In fact, the key of Kymlicka's argument is an interpretation of the consequential account of neutrality or how deep should the consequential demand for neutrality run. Are there any other restrictions, enacted by the state, which should be imposed as a safeguard against such a breach? Or the state has its own limits (natural) on safeguarding in considering the consequences of its policies? The cultural marketplace<sup>165</sup> provides a space of free competition among competing conceptions of the good. In the long run, the effects of competition, unregulated, may lead to consequences as harsh as extinction to certain forms of cultural life. Judging extremes, the only remedy to such a development, would require the state to enact a ranking of worth among competing conceptions and thus impose state perfectionism. This solution would however lead to a "dictatorship of the articulate"<sup>166</sup>, which would penalize in a more obvious and fast manner than free competition.

Kymlicka encourages recognition insofar as recognition translates into safeguarding a disadvantaged position of a minority group, when the minority group's identity is filtered through the liberal ideal of autonomous choice. The cultural status is a valid cause as long as it represents a valid option, a meaningful option, enriching or maintaining a range for individual choice. Kymlicka's dilemma remains defined within these terms<sup>167</sup>, considering that sometimes the liberal equality or blindness as labelled by Taylor, does not suffice to satisfy the neutral ideal according to a rigid interpretation of the consequential account.

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<sup>165</sup> *ibid.*, p.900

<sup>166</sup> *ibid.*, p. 900

<sup>167</sup> *ibid.*, pp. 899-905

## Kymlicka: Return and Departure from Rawls

Thus, reassessing the need for an instance not captured within an ideal of authenticity, or a voice seeking a neutral demand from within a comprehensive conception, Rawls' premises for neutrality win out in justification. The liberal state does not evaluate the conceptions of the good, rendering them equal chances in the pursuit of comprehensive ideal. This passive attitude, entailed by justificatory neutrality, does not satisfy as well the policy's consequences. Upholding from worth judgements and from assistance, the state might however favour some conceptions, whilst condemning others to disappearance. This state of facts is characterized by Kymlicka through the concept of the cultural marketplace, by translating the image of conflicting claims into a competitive struggle. This concept is forged in comparison with the image of the free market rendered by a laissez-faire economic policy of a liberal state. In analogy, a state passive in what regards the consequential dimension of its policies, which establishes justificatory neutrality as a reigning account, provides the grounds for a cultural marketplace. These grounds are provided through the only weapon left at hand for comprehensive conceptions: the equal right of pursuit. Having this sole official right entailed, different conflicting claims within society seek to maximize it, viewing the society as a closed space, with limited resources (primary goods, as well as adherents). At this point the society is a space of relativity and of free agents circulating as assigned to different conceptions. The space of pursuit is a space for survival in these terms, for any conception of the good. Once they are stripped of their means of pursuit or their representation falls beneath a competitive standards, the conceptions are condemned to slow death.

Kymlicka's account summarizes best the problematic of neutrality. He leaves as well open a basic question troubling the neutral ideal: whether the state should be

engaged in this competitive struggle, or whether the social means left at hand for particular conceptions suffice in order to render the political approach as just. How far must justice go in this interpretation? Is there a limit where procedural justice can clash with another intuition regarding just standards? Can the emphasis on individual choice justify a further intrusion of justice into the consequences of state policy? Are conceptions of the good valuable in themselves or their value is mediated by means of individual choice rendering them a pure instrumental dimension?

All these questions remain open in the end of Kymlicka's broad insight on neutrality, and they remain to be decided one by one, for all of them are correlated, pending between the weight given in theory to individual autonomy and intrinsic value accorded to various comprehensive conceptions of the good.

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