

An Interpretation of Kant: the Political Neutrality of Justice and the Value of Liberty

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Abstract

We aim to show how misleading is to say that liberalism can be based only on a conception of liberty as a value and that Kantian liberalism, in particular, describes liberty as a value. An individual can be considered as a moral subject if and only if one can attribute him freedom, and therefore responsibility. Thus, liberty is a possibility condition for every consistent moral and legal system. However, we have to draw a distinction between liberty as a transcendental condition of every moral and legal discourse, and freedom as an empirical and highly problematical description of behaviors.

1. Neutrality and Liberalism

One of the most pressing problems for much of contemporary liberalism is to provide a philosophical vindication for justice in a world deprived of a unitary ethos, or, in broader terms, to formulate a liberal political philosophy which overlaps as little as possible moral philosophy. In fact, the independence of the two spheres of problems seems to give the advantage of putting to one side the plurality of individual values and ways of life, in the name of a political justice which aims to be neutral in respect of the fundamental value of the liberal tradition, that of individual autonomy. A morally neutral political philosophy seems more powerful than a philosophical position linked to a single axiology, because it seems able to dominate a pluralistic world with its arguments, without reference to any corpus of shared values. Help in clarifying the terms of this question may be found in a quotation from John Rawls:

When Hobbes addressed the contentious divisions of his day between religious sects, and between the Crown, aristocracy and middle-classes, the basis of his appeal was self-interest: men's fear of the death and their desire for the means of a commodious life. On this basis he sought to justify obedience to an existing effective (even if need be absolute) sovereign. Hobbes did not think this form of psychological egoism was true; but he thought it was accurate enough for his purposes. The assumption was a political one, adopted to give his views practical effect. In a society fragmented by sectarian divisions and warring interests, he saw no other common foothold for political argument.¹

From Rawls' point of view Hobbes' contract theory does not constitute the political part of a comprehensive philosophical system but must be considered as initiating an autonomous political philosophy able to deal with the moral heterogeneity of democratic and pluralistic societies.

Is it possible to justify liberal political justice without contaminating it, as it were, with a moral philosophy, with a theory of the "good life"? This kind of question is philosophical, but also political, inasmuch as it refers to a society dominated by the polytheism of values and of anthropological projects. Rawls' type of contract theory proposed to formulate a liberal theory of justice assuming as criteria all what, in an original position, rational individuals protected by a veil of ignorance would have chosen about their own effective personal and social conditions.² The communitarian criticism has stigmatized Rawls' type of approach insofar as it is inspired by a rationality mistakenly conceived as

1. J. Rawls, *The Idea of an Overlapping Consensus*, "Oxford Journal of Legal Studies", 1987, 7/1, p.2. See also J. Rawls, *Political Liberalism*, New York, Columbia University Press, 1993, pp. 133-172.

2. Id., *A Theory of Justice*, Oxford, Oxford University Press, 1987, pp. 3-53.

abstractness and universalism, which in reality presupposes the justice characteristic of liberal individualism, and tries to conceal the fact that any complex of rational principles is historically and socially contextual, and hence referable only to individuals rooted in traditions and not to hypothetical, bodiless beings.¹

Rawls' reply to this criticism refers to the fact that our western political communities are founded on no single anthropological-moral doctrine, because of the pluralism and the refusal of democracies to use state power against dissenters²: in this situation, to show the possibility of an overlapping consensus, of a consensus to a strictly political justice which overlaps with several anthropological and moral conceptions, seems the only politically efficacious option³.

Rawls, in fact, seems to accept the criticisms of the communitarians in their political sense, and defends the efficacy of his system in current conditions, even if it is still hard to understand how a Neoaristotelian traditionalist, supporter of a comprehensive anthropological and political project, can be satisfied with a minimal political justice accepting moral heterogeneity as a *fait-accompl*i; likewise a Hobbesian fear of violent death would not dissuade a person bent on martyrdom. But if such is the case then Rawls too, like Hobbes, seems to fall before the conflict which he set out to confront: there are ethical-political conceptions of the "good life" which refuse to make a distinction between public justice and private morality, just as there are human beings who can overcome the fear of a violent death. Rawls' project seems to have a paradoxical outcome: his theory is unable, from the political point of view, to "superimpose" consensus on anyone who doesn't already agree with it in principle.

We aim to ask whether we cannot come to terms with this problem more articulately by changing the formulation of the distinction between the conceptions of justice and that of the "good life" - a commonplace for the liberal wing of the American debate. As we have tried to demonstrate, Rawls' attempt to indicate the conditions of political efficiency of his own theory of justice brings him perilously close to the characteristic uncertainty of the Neoaristotelian approaches, which are able to justify the established community, but offer no arguments in cases of conflict, dissent and disunity. The distinction between political justice and good life, then, seems to be the mark of a not even very paradoxical liberal communitarianism⁴.

But to appreciate how full of risk is this contamination, it may be opportune to examine the way in which another American thinker of liberal position, C.E. Larmore, comes to terms with the Neoaristotelian position⁵. He intends to explain a neutral liberal political justice not as the by-product of an impossible rational construction able to stand apart from any conception of the "good life", but as able to exclude those moral positions which in the given context are controversial, and refer only to those which are shared⁶.

Larmore accepts the Neoaristotelian approach insofar as he sets the particular and contextual character of moral judgement against the claims of deontological ethics of Kantian type and teleological positions of utilitarian kind to provide a completely explicit decision-making procedure in the moral sphere⁷.

By moral judgement Larmore means, with Kantian overtones, the faculty of applying the moral rules in an appropriate manner to particular circumstances, in cases where such an application entails a

1 A. MacIntyre, *Whose Justice? Which Rationality?*, Notre Dame, University of Notre Dame Press, 1988, pp. 1-11.

2 J. Rawls, *The Idea of an Overlapping Consensus*, p. 10.

3. J. Rawls, *The Idea of an Overlapping Consensus*, pp. 2-5.

4. See M. Walzer, *The Communitarian Critique to Liberalism*, "Political Theory", 18/1, 1990, pp. 6-23.

5. C.E. Larmore, *Patterns of moral complexity*, Cambridge, Cambridge University Press, 1987; *Political Liberalism*, in "Political Theory", 18/3, 1990, pp. 339-360.

6. C.E. Larmore, *Patterns of moral complexity*, pp. 42-55,

7. C.E. Larmore, *Patterns of moral complexity*, pp. IX-XIII.

choice between alternative moral points of view¹. From this irreducible particularity characteristic of every single moral judgement is drawn the thesis of the fundamental heterogeneity of morality: not only do men obey different moral principles, but there exist many ultimate sources of moral values². A similar viewpoint allows Larmore to accept the thesis of the communitarians on the inter-subjective constitution of the moral subject, as much as it is based in a social, historical, cultural and traditional context³; at the same time, however, his recognition of the heterogeneity of the moral principles leaves him space to discriminate between ethics and politics, between visions of the "good life" and visions of justice. His basic objection to the communitarian Neoaristotelianism of MacIntyre and his criticism of the moral fragmentation of liberal-democratic societies refers to the fact that liberalism can be formulated simply and exclusively as a political doctrine, and no longer as a general theory of human nature⁴.

At this point we might wonder how a theory which refuses the possibility of discussing moral rules beyond their historical and cultural rootedness is able to justify the distinction between a liberal political justice, which claims to be neutral respecting conceptions of the "good life", and the individual anthropological-moral positions. How is it possible, in other words, to speak of liberal neutrality even when limited to political procedures - if every ethical position is an expression of an holistic totality and of an inevitable historical-cultural situation? Larmore answers by characterizing his own conception of liberal neutrality as contextual, even if inspired by a moral principal of equal respect for persons: to justify a belief under examination it is sufficient to appeal to other shared beliefs not called in question in that particular circumstance⁵. In this sense, liberalism is a political doctrine that can bear moral complexity better than Neoaristotelian approaches, for the very reason that it can do without the so-called moral monism, and is able to impose itself on a plurality of values. The understanding of liberalism carried out by Larmore is very near to the Neoaristotelian positions, and shares political and philosophical difficulties with them: it is only able to justify consensus where it already exists, where, that is, there is a minimum of shared values which can serve as a basis for relatively neutral discussion, but has nothing to say on radical conflicts of values, because it is unable to provide a common ground for discussion in the moment of need.

Would it be possible to overcome this kind of difficulty a little more fully? To attempt an answer to this question, we will take up once more the examination of the distinction between political justice and conception of the "good life", with reference to an interpretation of Kantian ethics which is not only characteristic of Rawls and Larmore, but is also considerably widespread.

2. Liberalism and liberty as value.

Both Rawls and Larmore intend to distinguish their formulations of liberalism from the classical versions of Kant and John Stuart Mill, for the reason that, in their opinions, this kind of liberalism is not able to sustain a political conception of justice - insofar as it is rigorously separated from a comprehensive theory of virtue and of good - and is hence traceable to a value - autonomy for Kant, and individualism for Mill - in competition with the others⁶. In fact, the classical understandings of liberalism as an ethical and political doctrine orientated, in law, in politics and in morality on the basis of the value of individual liberty, are not able to cope with the complexity and plurality of values which is the principal philosophical and political problem of liberal-democratic societies. On the contrary, a liberalism which reduces itself to a strictly political conception of justice can easily include within itself

1. C.E. Larmore, *Patterns of moral complexity*, pp. 7-9.

2. C.E. Larmore, *Patterns of moral complexity*, pp.131-153.

3. C.E. Larmore, *Patterns of moral complexity*, pp. 11-21.

4. C.E. Larmore, *Patterns of moral complexity*, pp. 22-39,

5. C.E. Larmore, *Patterns of moral complexity*, pp. 40-68.

6. C.E. Larmore, *Patterns of moral complexity*, pp.77-85; J. Rawls, *Overlapping Consensus*, pp. 5-6.

the wide range of moral life, by virtue of a relative neutrality which is the by-product of a procedural construction.

Of course, the validity of such a political doctrine rests on the existence of a basic consensus to liberal justice, or on a minimum patrimony of shared values on the basis of which politics can be guaranteed contextual neutrality. Therefore, whenever the possibility of this minimal agreement is lacking - that is, where we are concerned with an irretrievable conflict of values - political philosophy not only cannot offer any solutions, but is not even able to offer the smallest contribution to the discussion. And yet, when we speak of conflict of values, we are alluding to a contrast between two or more positions theoretically articulated on the basis of some reason, with pretences to intersubjective validity: but this understanding of liberalism is not able, at the time of greatest need, to formulate at least a moral dialectic, and limits itself to announcing "love me or leave me"?

We may suspect that the distinction between a plurality of comprehensive views of the "good life", and a minimal and limited conception of political justice, is simple and evident only in appearance. To give this suspicion a basis, we will scrutinize the criticism of Kant's liberalism undertaken by Rawls and, above all, by Larmore, inasmuch as they are based on a rather widespread interpretation of Kantian ethics¹.

Larmore characterizes Kantian ethics as centered on a rational moral human nature, which demands that we do not identify ourselves with any vision of the "good life". From this point of view, still according to Larmore, Kant maintains the priority of right - as a complex of universal moral rules - over good, because the lack of an a priori concept of happiness and of perfection makes the good conditioned by the variability of empirical desires, and hence the exclusive object of completely contingent hypothetical imperatives.

Now Larmore, since he partially appropriates the Neoaristotelian approach, includes in morality not only the universal rules, but everything which one could define, in the vaguest and most marginal way, value, and hence the variety of conceptions of the "good life", and also the obligations stemming from a person's social position, including for example the so-called particular duties of friendship. He sees in Kant the author of an identification between universality, categoricalness and formality of rules, on the one hand, and good on the other: of course, here the concept of good includes, in Neoaristotelian or pre-Kantian manner, all that is good for us, and hence not only virtue, but also happiness, and everything that is pursued and recommended as value. And, thanks to this identification between morality and human good as a whole, Kant becomes transformed into an author of a metaphysics which has autonomy as its ideal: our "real personality" is the ability to exist beyond empirical circumstances, to carry out rational choices which do not depend on natural and social contingencies, on our conceptions of the good life, or on our own desires. In Rawls' words: "Kant held, I believe, that a person is acting autonomously when the principles of his action are chosen by him as the most adequate possible expression of his nature as a free and equal rational being"². The moral subject defines himself on the basis of his ability to create his own character by himself. For this reason, in the Kantian formulation of liberalism, the neutrality of the state with respect to conceptions of happiness is the expression of an ideal of the good life identified with autonomy as value³. And, from Larmore's point of view, this kind of formulation is open to criticism

1. See for instance B. Williams, *Ethics and the Limits of Philosophy*, London, Fontana/Collins, 1985, pp. 64-69.

2. J. Rawls, *A Theory of Justice*, p. 252.

3. C.E. Larmore, *Patterns of moral complexity* cit., pp. 69-90. Cf. the Kantian criticism of Moore, for whom the moral obligation is metaphysically founded - with a naturalistic fallacy - on the nature of the rational being, whose character is just that of being obliged by moral laws; see, in this regard K.H. Ilting, *Der naturalistische Fehlschluss bei Kant*, in *Rehabilitierung der praktischen Philosophie*, hrsg. v. M. Riedel, Freiburg i. B., Rombach, 1972, pp. 113-130, and S. Landucci, *Sulla meta-etica di Kant nella 'Critica della ragion pratica'*, in "Rivista di filosofia", 81/1, 1990, pp. 57-82.

both because it gives an unrealistic characterization of the moral subject, endowing him with a radical liberty, able to completely abstract himself from the particularity of the situation, and because, in the face of the demands of a heterogeneous moral world, it sacrifices the political justifiability of the liberal doctrine in favour of an exclusive conception of good, degrading it to the position of a value equal with others.

However this interpretation of Kant - based on the metaphysical image of man which accomplish its true essence in liberty - may seem arguable, it may be useful to consider the meaning of this identification of liberty with a value.

Kantian ethics, in the presented version, could be concentrated in an imperative of the kind: "Be independent! Make your choices 'rationally', and not on the basis of customs, of your current conception of happiness, or of your own desires!" Now, to propose liberty in this way as the supreme value of morality, insofar as it conforms to the rationality of our "true self", would be highly problematical. Firstly, we may doubt the descriptive efficacy of the idea of a radical liberty beyond any historical and cultural influence. Secondly, we may ask ourselves whether a moral theory which treats liberty as a value is really coherent: what sense and what legitimacy has an imperative of the kind "Be free"? If by liberty we mean, negatively, spontaneity as the absence of any type of dependence, any attempt to impose liberty as a value by making the command "Be free!" the object of obedience would resolve itself in a contradiction in terms; if, on the other hand, positively, we want to endow liberty with any content whatsoever, we will have to show how and why that particular content can be reconciled with the negative aspect of liberty itself. In this second case, in fact, the immediate object of the command is not liberty, but the particular content that we wish to impose - for example, in Rousseau's manner, "Obey the general will!" - not succeeding in proving the connection between the negative and positive aspects of liberty means, simply, to transform the attractive imperative "Be free!" into a rhetorical expedient to command something that has nothing to do with liberty. The usual strategy to unite the negative and positive aspects of liberty is the individuation of what we may call one's own "real self", the authentic and spontaneous nucleus of the moral personality: and, evidently, this strategy leads to a naturalistic fallacy: the "real self", if it were really the authentic nucleus of the personality, would operate without the necessity for imperatives to be imposed.

Is it really correct to speak, in political philosophy, of liberty as a value? Before trying to respond to this question, it is opportune to remember the way in which Kant effectively formulated it. First of all, for Kant the knowledge of moral laws - which liberty is connected to as a postulate - was a fact (*Faktum*) of reason¹, that is something valid in an original way and completely impossible of deduction by others. In other words, according to Kant there is no argument - neither prescriptive nor descriptive - able to show why one should be moral: the obligatory character of the law can be felt as such only by whoever already feels himself a participant in the fact of morality², and cannot derive from a description - empirical or metaphysical - of human nature³. We are, therefore, outside every naturalistic fallacy: liberty cannot serve to describe the empirical person, nor a hypothetical "real self", because it is only the content of a postulate of pure practical reason, a condition without which the moral law cannot be conceived without contradiction⁴. In other words, when the moral subject asks himself "What should I do?", he cannot help supposing himself free - negatively, as capable of actions not conditioned by another, and positively as autonomous, or able to formulate his own laws for himself⁵. Autonomy, after all, is the only possible positive content of a liberty which can be known exclusively taking the moral law as a starting point, and which can never be attributed in experience

1. I. Kant, *Kritik der praktischen Vernunft*, A 55-56.

2. See in this respect V. Mathieu, *Kant e il concetto della responsabilità individuale*, in A. Fabris e L. Baccelli (eds.), *A partire da Kant*, Milano, Angeli, 1989, pp. 15-24.

3. I. Kant, *Grundlegung zur Metaphysik der Sitten*, BA 122-128.

4. I. Kant., *Kritik der praktischen Vernunft*, A 238-288.

5. I. Kant., *Grundlegung zur Metaphysik der Sitten*, BA 97-101

to absolute spontaneity, originality, beginning *ex nihilo*, insofar as knowledge is always a connection of elements in a system of reciprocal dependence.

If we translate this thesis of Kant into the philosophical language of our day, we would have to affirm that liberty is not, properly, a value amongst others, nor, still less, an anthropological-descriptive element, but a condition of reflection on values, a condition able to be the object of a postulate, because it is not knowable nor usable as a description of man as an effectively living being in society. The fact that liberty is exclusively knowable as a pre-supposition and possibility condition for values and of our discussion of them, and not vice-versa, ensures that it is completely unusable as an essential anthropological-moral element of a hypothetical "real self" of metaphysical type. The communitarians and Larmore have good reasons to reject as illusory the idea of an empirical moral subject able to determine its own values, choices and character entirely by itself: they cannot, however, as authors of ethical and political theories, degrade coherently liberty to a value available with other values. This would imply the logical error of valuing - and eventually abandoning - the possibility condition (freedom) on the basis of the result (values) which follows from it.

On the basis of the foregoing, we can attempt to reformulate the distinction between justice and conceptions of the "good life" by subtracting liberty from the group of substantive values, and raising it to a possibility condition in political and ethical discussion and choice. Since any theory of political justice and of the "good life" which presents arguments on values makes sense only on the basis of the presupposition of liberty, no axiology can - without contradiction - treat the presupposition in question as a value available amongst others. In other words: liberty is the insuperable limit for any kind of moral discourse, a limit which should be respected by anyone who recognizes the pluralism of values. Indeed, we may classify ethical-political theories in two groups, according to the relation between liberty and the values which it makes possible:

a) ethics which assume next to liberty in a negative sense as capacity for self-determination (indispensable because it offers a moral subject onto which values can be directed), a specific content of values as well; they may assume, for example, some conception of the "good life", justified on the basis of a different reason than liberty itself. In this category come, for instance, the moral and political theories which justify the proposed values on the basis of some metaphysical conception of human nature;

b) ethics which try to articulate exclusively that liberty which operates as their own possibility condition, making abstractions of values conditioned by it.

The specific difficulty of the ethics of group sub a) is the conciliation between negative liberty - which they are obliged to presuppose - and the justification of the substantive values proposed by them: for example, if we start with a conception of human nature endowed with onto-axiological necessity, it is hard to understand what is the place of that negative liberty which is the indispensable condition of every moral prescription, but which appears to be in contradiction with the idea of a necessitating nature. Furthermore, how to explain the plurality of conceptions of the "good life"?

As far as the ethics of the group sub b) are concerned, one of the principal problems is the relation between the form and the content of liberty on the basis of which they orientate themselves: in fact, the attribution of a specific content to liberty can transform the alleged ethic of the category sub b) into one of the group sub a), burdened with the same practical difficulties.

From the strictly political point of view, the tension, characteristic of all the theories which can be listed amongst the ethics of group sub a), between negative liberty and substantive values, produces a totalitarian temptation: if we really know with certainty what is the good for man, why should it not be right to constrain dissenters to accept it? If a good for man beyond his possibility condition really exists, why not carry it out once for all by suppressing, as far as possible, every expression of the condition itself? If, on the other hand, it were really possible to formulate an ethic endowed with the characteristics of group sub b), it would bring about a liberal justice, aiming at the maximum neutrality with respect of the single conceptions of the "good life", insofar as it would be oriented exclusively on the basis of axiologically unavailable concepts, of moral liberty as capacity for self-determination, or

as indispensable medium to accede morally to substantive values of any kind. This formulation of liberal justice, on the other hand, would not be sustained by the precarious maximum common denominator of values shared at that moment, but would be able to present itself as neutral guarantor of the possibility for self-determination of everyone. Furthermore, theoretical discussion of the so-called values would not be condemned to be stopped by the fact of pluralism, because the condition of liberty would be its common ground.

Of course, as liberty is known exclusively as the possibility condition for any political and moral theory, the whole following construction should not contain any anthropological and descriptive element, which would make it fall into the dualism, typical of those ethics of group sub a), between liberty and the content of liberty: the system requires the maximum formality and abstractness. This theory aims to be both political and moral, and bases itself on a rigorous distinction between a possibility condition, liberty, and all the values which it makes possible because they do not contradict their condition.

This sketch of moral theory would be threatened by the inherent difficulties of interpretation of a universe of experience in terms of a formal hypothetical-deductive system. Firstly, since the liberty which distinguishes the moral subject is only accessible as a postulate, as a possibility condition of practical reasoning, no certain empirical mark would be available, within the system, which would enable to qualify anyone as a moral subject. In the second place, the task of justice would be in any case that of guaranteeing not moral liberty - which is in any case still pre-supposed - but, rather, its highly problematical phenomenal image¹. In other words: liberty, insofar as it represents capacity for self-determination, is a postulate which conditions the possibility of every kind of ethical and political discourse, always pre-supposed except in cases of pure and simple violence in which no distinction is made, from the point of view of treatment, between persons and things. On the contrary, the "maximum liberty possible under laws" is something requiring anthropological determination, and is hence subject to discussion. We will take into consideration the example with which Hobbes, in *De Cive*, illustrates the concept of liberty: "Water contained in a vase is not free, because the vase prevents its spreading, and it is only liberated by the breaking of the vase"². Hobbes does not discriminate at all, as far as the applicability of the predicate "liberty" is concerned, between a moral agent endowed with liberty as a capacity for self-determination and moral responsibility, and any agent whatsoever which moves on the basis of deterministic laws: liberty is always reduced in any case to the possibility of carrying out certain movements without obstruction. In effect, in his overall thinking the *personalitas moralis* is something irrelevant, inasmuch as the fear of the *summum malum* of violent death is an unshakeable certainty which governs and determines human nature beyond any value. However, also those who recognize a real pluralism of values, deprived a maximum common denominator given by nature, and who morally accept liberty as a condition of ethical evaluation and attribution of responsibility, cannot, in a political and juridical sphere, help conceiving liberty, anthropologically, in Hobbes' manner, as the physical possibility of action and of movement. And, if such is the case, a justice which is concerned with guaranteeing maximum liberty as a possibility condition for every ethical and every political action, is concerned not with liberty as an intangible postulate, but with its highly uncertain and ever-changing juridical and political image.

However, this kind of approach permits theory to discuss political and moral problems much more deeply than whoever, starting from the fact of pluralism, reduces political philosophy to a blank *cheque*, completely superfluous, in favour of the minimal patrimony of values shared at any given moment, and transforms axiology into a no man's land, shut off to any attempt at theoretical argumentation.

1. G. Tomasi, *L'idea della formazione dello stato fra felicità e libertà. Note sul rapporto fra politica e filosofia pratica* in Kant, in "Verifiche", 19/4, 1990, pp. 435-88.

2. T. Hobbes, *Elementorum philosophiae sectio tertia de cive*, IX, 8.