

MORAL FOUNDATIONS OF CONTEMPORARY LIBERALISM*

Dušan Pavlović

*Faculty of Political Science
University of Belgrade*

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Abstract This essay is an inquiry into the fundamentals of contemporary liberalism. I defend the following claim: the premises of contemporary liberal theory cannot avoid referring to the ideal of equality of individuals in some way. Equality is a principle to organize the fundamental level of the theory from which to derive the principles for organizing liberal institutions. To support these claims, I distinguish justificatory from perfectionist liberalism, and then look into some of the most relevant theories of contemporary political philosophy that provide the ethical basis for contemporary liberalism.

Key Words Contemporary liberalism, perfectionism, impartiality, neutrality, equality

Introduction

Liberal theory advocates institutions such as civic equality, freedom of speech and worship, division of power, non-discrimination, and equal opportunity. Such institutions can be arrived at from different standpoints and conceptions of the good. However, in this paper I argue that one of the chief goals of contemporary liberal thought is to construct a theory based on some sort of equality of

individuals so that liberal institutions can be justified even to those who have no respect for liberal values. I do this by revisiting the ground floor level¹ of the theory of John Rawls, Thomas Scanlon, and Jürgen Habermas. Their theories contain a conceptualization of equality that is expressed by concepts such as strains of commitment, reasonable rejection, and the discourse principle, re-

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¹ The term 'ground floor level' refers to the fundamental level of the theory, a level from which we have to derive principles and institutions. For instance, in Rawls's theory this level is designed as the original position. I will elaborate on the concept itself in section 4.

spectively (sections 5-7). I claim that such a theoretical groundwork offers a plausible basis for liberal theory to justify liberal institutions without referring to a comprehensive moral doctrine.

Before I look more closely into their theories, I should like to differentiate between two versions of contemporary liberalism: justificatory and perfectionist liberalism. My claim is that if liberalism wants to be able to win the allegiance of those who denigrate liberal institutions, it has to distance itself from the perfectionist approach. To perfectionists, like Joseph Raz, autonomy is the value that the government has to give priority in pursuing public policy. But I want to argue that liberals should resist his claim that 'the value of personal autonomy is the fact of life' (Raz, 1986: 394). I believe that the perfectionist approach has had a negative impact on the idea that liberal institutions present an acceptable ground for non-liberal conceptions of the good life.

Perfectionists often like to say that their version of liberalism is more hospitable to liberal institutions than its neutralist counterpart. This is a trivial suggestion, but nevertheless has significant repercussions for liberalism in general. If liberals settle on the perfectionist version, liberal institutions will be accepted only by those who already accept liberalism as a moral doctrine. Over the last few years, several studies have addressed the issue of perfectionism in contemporary liberalism (Stephen and Klosko, 2003; Quong, 2011; Lister, 2013) Most of them defended the non-perfectionist kind of liberalism from the viewpoint of public justification. In this paper I want to expand on these insights by identifying how the concept of equality fits into the non-perfectionist version of liberal-

ism. I claim that some kind of equality matters for liberalism.

But what kind of equality does liberalism require? I want to argue that the kind of equality liberalism needs is a form of a general principle for arranging a choice situation from which to select the principles of a just society. What I offer here is not an egalitarian theory. If we take the ideal of equality as a component of egalitarian theory, equality should be understood in the following manner: 'All Fs who do not have G should have G if some Fs have it' (Raz, 1986: 225). Thus, having equality as a chief component of a theory must demonstrate that 'it is in itself bad that some people are worse off than others' (Parfit, 1997: 204).

In this essay, equality is understood neither as an intrinsic principle, nor as an ideal, but rather as an arranging principle for the situation in which people hypothetically discuss what kind of institutions they would like to live under. The idea was expressed by Ronald Dworkin in his essay "Why Liberals Should Care About Equality": '[Government] must impose no sacrifices or constraint on any citizen in virtue of an argument that the citizen could not accept without abandoning his sense of equal worth' (Dworkin, 1985: 205). The key idea was clear: government which cares about equality must abstain from enforcing private morals on others. Of course, Dworkin, whose theory was not constructivist, talked about a direct link between the government and equality. But I want to show that this idea can be found more broadly formulated in theories that, as it were, have two levels – a level of premises and a level of institutions.

This essay is an inquiry into the moral foundations of contemporary liberal-

ism. However, I at no point want to suggest that Scanlon's and Habermas's theories are the theories that advocate liberal institutions. Likewise, neither Scanlon, nor Habermas are liberal, nor are they thinkers who deal with justice. But I argue that *moral* concepts that can be found at the fundamental levels of their theories (reasonable rejection, discourse principle) can be used as foundations on which to build liberal institutions. Their theories reflect the ideal of equality by imposing reasonable constraints concerning what kind of argument can be put forward in arguing for political principles. These constraints eliminate the advantage that could lead to adopting partial principles of justice, and lay groundwork for a liberal theory of justice. Such groundwork is, in my view, essential for justificatory liberalism which I espouse on in this paper (section 2).

What is the contribution of this paper? I am not formulating a new version of liberalism. I identify the main theoretical representatives of anti-perfectionist liberalism by showing that, despite their theoretical and conceptual differences as well as mutual debates, there is a unifying theme in all of them. Likewise, I am not debating the possibility of the kind of liberalism under consideration here. I am only showing what other thinkers (some of whom are theoretical non-liberals) believed was a reasonable ground from which liberal institutions could be justified to others.

Justificatory Liberalism

There are two types of liberalism. The first type is often referred to as 'neutral' liberalism, but I prefer the term political liberalism. This line of thinking in contemporary political philosophy begins with Rawls, and as I show here, can

be found in the work of Scanlon, Barry, and Habermas (although, Scanlon's and Habermas's theories are not liberal themselves). The underlying idea of this variant of liberalism is that it does not directly advocate the dominant position of liberal institutions in public life, but instead wants to give reasons for the acceptance of liberal institutions. The idea is predicated on the fact of pluralism, under which it is not possible to formulate self-evident principles of justice that can be endorsed by every member of society.

This view is in stark contrast with the perfectionist view that starts from the autonomy of the person. It claims that only conceptions of the good that are autonomy-friendly should receive the support of government policy (Raz 1986). In other words, government will give priority only to those conceptions which, as it were, have the right pedigree (Barry, 1995: 131), which are arrived at in an autonomous way, and which permit individuals to revise their conceptions of the good life (Kymlicka, 1989; 1995). The repercussion of such a view is that a whole array of conceptions of the good that cannot be squared with the autonomy of the person, which is a distinctively liberal ideal, will be put at a disadvantage by government action from the very start.

I want to show that, in contrast to the autonomy of the person, the principle of equality is a plausible ground from which to begin in order to select the principles for a just society. This leads to the following problem: can we, in a theory of liberal institutions that are not underwritten by non-liberal conceptions of the good, begin from something that is distinctly liberal such as the concept of autonomy? I claim that we cannot. Rather, we need to begin from some broader

moral notions that can be argued to be acceptable to those who reject liberal institutions. I claim this is the principle of equality. At the fundamental level, it is essential to begin from equality because this is the value that has the capacity to lead towards the principles for organizing public institutions that can be endorsed by everyone. Ground-floor equality is, in different forms, present in the theories of John Rawls, Thomas Scanlon, and Jürgen Habermas, which I discuss in sections 5-7.

Conceptions of the Good

What should be treated equally at the ground floor level? I suggest that liberalism sees people as equals with respect to their conceptions of the good. John Rawls was the first to bring in the concept of a life plan in to political philosophy (Rawls, 1971: 407-16). I define the conception of the good (or life plan, to use an alternative expression) as a set of personal values that a person thinks are worth pursuing. They can be derived from a broader theory or ideology (such as liberalism, communism, various types of nationalism, or some religious doctrine) but it can also be an idiosyncratic viewpoint. Conceptions of the good are always based on a comprehensive moral, political or religious doctrine (Rawls, 1993: 13).

Perfectionist liberals, such as Raz, believe that conceptions of the good are valid only if they are arrived at in an autonomous manner (Raw, 1986: 365-399). Similarly, in *A Theory of Justice*, Rawls insisted that valid life plans are only those plans which are rational, namely – ‘consisted with the principles of rational choice when these are applied to all the relevant features of his situation’ (Rawls, 1971: 408).

Now, if we construct institutions that will reflect only these two requirements (autonomy of the person and rational choice), conceptions of the good that are essentially non-liberal will be disadvantaged. Believing that any conception of the good is valid as long as it is autonomously pursued or is a product of rational choice cannot result in legitimacy of liberal institutions.

Why is such a treatment of the conceptions of the good unacceptable to justificatory liberalism? Because it automatically leads to a specific political action. Once you establish that only autonomy-friendly conceptions of the good are valid, you will be obliged to protect and encourage them via the state’s authority. Raz explains: ‘For it is the goal of all political action to enable individuals to pursue valid conceptions of the good and to discourage empty or evil ones’ (Raz, 1986: 133). To be sure, the aim of liberalism is to discourage evil political doctrines whose aim is to harm others. This aim has to be justified by referring to a broader moral concept that can command broader allegiance.

We could, therefore, allow for a more relaxed definition of a conception of the good that does not fall back on Aristotelian perfectionism but rather acknowledges that ‘poetry *is* as good as a pushpin.’ This acknowledgement can be couched in a form of what Janos Kis calls the humanist presumption, which says that ‘if (groups of) individuals are seriously attached to a conception of the good, then, unless there are very weighty reasons to the contrary, it has to be presumed that their conception represents a meaningful human interest’ (Kis, 1997: 33).

Those conceptions of the good that can be invited into the ground floor level of the theory will be fleshed out in sec-

tion 4. For now, it suffices to say that the ground floor level of the theory permits conceptions of the good that are not autonomously pursued, are rational, or prone to constant revision. (For example, someone who always firmly believes that a pushpin is as good as poetry will be treated equally as one who used to think that a pushpin was good as poetry but then changed her mind.) But we surely must agree that, whatever the plan, individuals must be given a chance to pursue their life plans and be reasonably confident that their plans can be carried through. Life plans may vary, but it is important for liberalism that all life plans are equal in that they all have a *prima facie* equal claim to their fulfillment. Thus, anybody can be said to want institutions as well as necessary resources for her plan's implementation.

Impartiality and Neutrality

What concerns me here is equality at the fundamental (ground floor) level of the theory. The major distinction that distinguishes 'fundamental level' liberals from perfectionist liberals is that the latter have no fundamental level. This is understandable if one has in mind what is to be justified. Perfectionist liberals claim that governments have to pursue public policies that can be squared with the concept of autonomy. Conceptions of the good life that do not have the right pedigree (autonomy) will be disadvantaged in public life.

We can talk about two types of justification: if we justify a policy, then the fundamental level is not needed. Public policies are justified directly if they promote a liberal way of life grounded in autonomy. However, if we want to justify institutions, we need to begin from the ground floor up, as it were. Raz is right

to point out that neutral liberals are known for believing 'that there is a deep-felt conviction that it is not within the right of any person to use the machinery of the state in order to force his conception of the good life on other adult persons' (Raz, 1986: 111). This is precisely why a two-level approach is needed. We need to justify principles that will establish a fair institutional framework within which it is possible to pursue whatever policies. What kind of policies will be adopted and pursued has nothing to do with the fundamental level. But when they are pursued, others, who do not endorse such policies, must be convinced that this pursuit is not unjust.

Let me sketch the basic argument at the ground floor level. It consists of three steps. Suppose we have a group of people who came together to decide under what kind of society they want to live. They still have no idea what the basic principles for such a society are, but they do know what their conceptions of the good are. Each individual is interested in defending their conceptions of the good life. Moreover, no principle is acceptable to anyone as long as it is not demonstrated to be acceptable to everyone. Finally, each individual is aware that they cannot impose their conceptions of the good on other people. To put it a different way, it is impermissible for me to propose principles regulating public institutions that would put your conception of the good at a disadvantage and favor mine.

But how do we accomplish this? Can we give a valid reason to anyone who believes that their conception of the good should serve as a basis for political institutions to abstain from imposing their moral doctrine on others? I believe that we can if we start from Rawls's idea of original position, Scanlon's test of reasonable rejection, and Habermas's ideal

speech situation. Indeed, I think that these three moral concepts have had the most influence on contemporary liberalism. At this point it suffices to say that the principle of equality leads us to another basic concept that needs to be clarified – namely, that of impartiality.

I said in section 1 that I do not accept the term ‘neutral’ liberalism, for I think it creates more trouble than it solves. At this point, I am obliged to expand on what the term ‘deontological’ or ‘justificatory’ means. Let me do this by distinguishing between the notions of ‘impartiality’ and ‘neutrality’.

Some authors employ these two notions interchangeably (Barry, 1995: 194-5; Nagel, 1991: 99-100), or sometimes use similar notions (like toleration) to express the same idea (Nagel, 1991: 166). Impartiality appears at the fundamental level of the theory, whereas the notion of neutrality comes into view at the public policy level. ‘Neutrality is a distinctly political principle’ (Kis, 2012: 1); impartiality is theoretical. Accordingly, one can talk about the impartiality of an original position on the one hand, and neutrality of the state or the government, on the other hand. Impartiality provides us with reasons as to why the parties should set aside their own conceptions of the good life when entering an original position. Neutrality should provide people with sufficient reason not to protest when public policy gives a head start to any particular conception of the good.

Impartiality entails that the fundamental level of the theory in which parties are situated as equal must be derived from no particular conception of the good. Opting for the supreme status of one conception of the good often means putting others at a disadvantaged position. Once it is recognized that the supreme status of any conception of the

good has the capability of precluding other conceptions from furtherance – which deprives rational persons of the incentive to enter the original position – the case for impartiality at the ground floor level is justified. But whereas impartiality does not deal with conceptions of the good, neutrality deals with all of them. This is because neutrality takes all conceptions of the good as valid as opposed to impartiality that takes all of them, as it were, as invalid. Neutrality explains why people should regard government public policy as unproblematic even if it advances some particular conceptions of the good. All neutrality demands is that public institutions reflect equal concern for all of those conceptions of the good that exist in a society and work on promotion of these conceptions in general. This is easy to understand given the fact that many policy decisions imply a Pareto improvement. But it does not mean that government is allowed to take only this sort of decision. To be sure, governments sometimes do take decisions that favor some conceptions of the good at the expense of others. Yet, they cannot avoid taking decisions on which public policy to pursue only because it will promote a conception of the good. This is simply not possible (Barry, 1995: 144-5).

When I say that deontological liberalism is impartial, I mean that I wish the parties at the ground floor level to be situated as equals, having no bargaining advantages over each other. Such a situation assumes that no one is able to use any advantage stemming from social, ethnic, or natural endowment facts in order to impose the principles that benefit only some individuals or social, ethnic or religious groups. The information that conveys this knowledge must be suppressed. But the suppression of in-

formation necessarily implies some sort of veil of ignorance, which in Rawls's case created as many problems as it solved. Therefore, instead of using the controversial device of the Rawlsian veil of ignorance, I say that the information, which could create advantages for some in an original position, may be known to the parties but may not be referred to when arguing for principles of justice. The idea is expressed by Andrew Arato: 'what we would then ask is not necessarily whether the actors were actually ignorant about their interests [...], but only whether they are willing to suspend, or rather to cancel out on the wishes and the arguments of their interlocutors the consequences of their actual knowledge' (Arato, 2000: 249). It is essential that the parties at the ground floor level are aware of their conceptions of the good in order to be able to defend them. They are allowed to refer to them *only* in order to reject what is unjust. Can this be the solution to the problem? In other words, why would someone who rejects liberal values be willing to abstain from referring to the information creating advantages for themselves? The simple answer is that the requirement not to refer to this kind of information contains no liberal tinge. Obviously, the essence of the conceptions of the good for each individual is of paramount importance. Equality is only an instrument to achieve it.

Impartiality would thus mean the following: you can keep and try to implement your conception of the good, but you must abstain from trying to impose your conception of the good as a basis for designing political institutions. Let me give an example that clarifies this. Suppose you are a member of a cult that calls for the restoration of the ten commandments of god. In addition to believing that if the apocalypse were to

occur in the year 3000, you as a member were required to abstain from having sex, using soap, and were allowed only one meal on Fridays and Sundays. To be treated equally and be represented at the ground floor level of the theory, you may stick to your cult and stand a good chance to continue its practices under liberal political institutions. However, if you believe that the only way for your conception of the good to thrive is that everyone else (who do not belong to your cult) must believe in doomsday, abstain from having sex and using soap, while eating a meal only twice a week, you would impose an unreasonable burden on others (section 6), and would upset the principle of equality of the 'original position'.

As a follower of the cult, you would, therefore, have good reasons to accept the requirements of the 'liberal original position'. However, everyone else would have good reasons to reject your conception of the good as a basis for designing political institutions that put everyone who does not follow your cult at a disadvantage.

The difference between impartiality (ground floor level) and neutrality (public policy level) should be now clear: impartiality privileges no moral doctrine (conception of the good); in contrast, neutrality can sometimes (but not always) result in a policy that privileges a certain conception of the good. Yet, if institutional procedures under which such a policy has been produced are fair, no one has a reason to protest. Liberal institutions are such kind of institutions.

Rawls and the Strains of Commitment

The major thesis of this essay consists in showing that any sort of justificatory liberalism cannot avoid referring to

the principle of equality. Hence, in this and the next two sections I take up the three prominent political thinkers – Rawls, Scanlon, and Habermas – and look into how they conceptualize equality and if they violate the requirements of impartiality set out in section 4.

The case of Rawls has usually been bound to rational choice and then to the idea of political liberalism. The former reflected a utilitarian influence; the latter perfectionism in his theory. Both aspects of Rawls's theory have been abandoned. One thing that has never been abandoned but on which, it seems to me, Rawls never insisted persistently enough is the concept of the strains of commitment. As I will show later, this concept is the most direct predecessor of Scanlon's idea of reasonable rejection, which today is probably the most efficient formulation of how ground floor equality should be arranged.

Interestingly enough, the early works of Rawls contained the idea of how to construct principles of justice without referring to self-interest, rational choice, and the veil of ignorance. In his 1955 essay "Justice as Fairness," Rawls states that the starting point for the principles of justice is a moral one. The assumption that people are in a fundamental sense equal naturally leads towards the proposition that 'there must always be a justification for departing from the initial position of equal liberty [...], and the burden of proof is placed on him who would depart from it' (Rawls, 1955: 166). Rawls, to be sure, introduces self-interest as a driving motivational force, but the strains of commitment are supposed to remind the parties that any selected principles are binding for the future. Since everyone 'understands that everyone should make in advance a firm commitment, which others also may be rea-

sonably expected to make, no one is to be given the opportunity to tailor the canons of a legitimate complaint to fit his own special condition' (*ibid.*: 171-2). Rawls indeed does not explicitly state anywhere that moral motivation overrides self-interest, but to put forward the kind of argument that takes into account the possible disadvantaged position of others is possible only if a moral motivation with which no conception of the good is privileged in the original position is presupposed. In a word, the procedure of the original position wherein people act on their conceptions of the good is a position that contains constraints that are 'analogous to those of having a morality, whereby rational and mutually self-interested persons are brought to act reasonably' (*ibid.*: 172).

The idea is fully elaborated in *A Theory of Justice*. The aim of the strains of commitment is the following. Once the deal among the parties to the original position is made, there is no going back. The agreements are made once and for all. Being fully aware of the possibility that there might be principles that impose an unreasonable burden, which is avoidable under an alternative set of principles, Rawls says that the parties 'cannot enter into agreements that might have consequences they cannot accept. They will avoid those that they can adhere to only with great difficulty. Since the original agreement is final and made in perpetuity, there is no second chance' (Rawls, 1971: 176). If it turns out that the agreement is bad for someone, those who finish on the losing side cannot step out of the agreement and call for a new round of negotiations. We have to pay special attention to what we agree to, for we all have some particular interest we want to preserve.

Accepting the principles that will put some conception of the good in jeopardy is tantamount to gambling. Thus, in what came as the final recomposition of his theory of justice, Rawls writes that:

given the conception of the person in justice as fairness, we say that the parties assume that, as persons with the two moral powers and a determinate complete conception of the good, citizens have, among other interests, certain religious, philosophical, and moral interests, and that the fulfillment of these interests must, if possible, be guaranteed. There are some things we cannot give up; they are not negotiable (Rawls, 2001: 104).

Rational choice and utilitarian principles cannot be the outcome of the original position if the parties take the strains of commitment seriously. And the later Rawls is explicit that 'the parties are seen as making an agreement; it is not simply that they each separately make the same choice' (*ibid.*: 102). Strictly speaking, the strains of commitment induce parties to take the agreement, their conception of the good, and the principles of justice seriously. Only in this way will parties treat each other with equal respect. This is why parties opt for the institutional scheme that will be beneficial for them even if they finish up in the worst off position. The difference principle is a principle that guarantees such an opportunity.

In discussing the strains of commitment in this section, I wanted to show that one part of Rawls's early theory of justice was part of justificatory liberalism – namely, that the veil of ignorance is not essential to the choice of the principles in the original position. This contractual basis of deontological liberalism is possible only if we presume that in an original position people must be treated

as equals, and that everyone knows that everyone is treated so. Equality here satisfies the requirements of impartiality in that no party is in the position to impose their conceptions of good life on the lives of others.

Scanlon and Reasonable Rejection

Scanlon's test of reasonable rejection emerged as an attempt to overcome the difficulties pertaining to Rawls's veil of ignorance and its utilitarian nature. The major failure of the early Rawls was that his theory never succeeded in constructing a social contract that no party could reasonably complain about or reject. By some accounts (Scanlon, 1982: 126-8; Barry, 1989: 335; 1995: 61-7), the wrong premise at the base of Rawls's theory was that of motivation. Rawls's individuals at the original position are self-interested people who, at best, will select the average utility principle (Harsanyi, 1975), the principle that Rawls declaratively wanted to avoid. One of the principal concerns in *A Theory of Justice* was to prove that it is possible to derive liberal principles of justice from utilitarian premises. But if the parties are self-interested, they must act in the way Harsanyi says they do. The snag is this: if you want to derive liberal principles, you have to begin from more general liberal assumptions; if you want to derive utilitarian principles, you can begin from general utilitarian assumptions. It is not possible to derive liberal principles by starting from utilitarian assumptions. And this is what Rawls tried to do in *A Theory of Justice*.

Scanlon proposed a different type of motivation. Instead of being self-interested, individuals in Scanlon's original position are equipped with a moral motivation, meaning that they care for others as much as for themselves. To put it

another way, the parties in the Scanlonian 'original position' are morally motivated in that they do not want to propose principles of justice unless they are plausible to everybody. Note that Scanlon here truly departs from the impersonal point of view: we care for others not because we may eventually end up in their place, but 'to find principles that they, as well as us, cannot reasonably reject' (Scanlon, 1998: 191). Therefore, the reasonable rejection assumes that an act is wrong if no one can reasonably reject it (Scanlon, 1982: 111; 1998: 153).

The concept that does the job in Scanlon's case is the concept of reasonableness. Reasonableness is essentially other-regarding, meaning it is not my but your interest that has to be met first. A principle cannot be adopted if anyone can voice a grounded criticism. Thus, Scanlon writes:

When we say, in the course of an attempt to reach some collective decision, that a person is being unreasonable, what we often mean is that he or she is refusing to take other people's interest into account. What we are claiming is that there is reason to take these interest into account *given* the supposed aim of reaching agreement or finding a course of action that everyone will be happy with (Scanlon, 1998: 33).

Scanlon's reasonable rejection could be regarded as an elaboration of Rawls's fundamental intuitions on justice expressed by the veil of ignorance (section 5). If you begin, as Scanlon does, from the idea that everyone is *prima facie* equally entitled to lay claim on the selection of the principles of justice, you will simply see that your thinking about right and wrong is structured by a different kind of motivation. 'This gives us direct reason to be concerned with other peo-

ple's point of view: not because we might, for all we know, actually *be* them, [...] but in order to find principles that they, as well as we, have reason to accept' (*ibid.*: 191). Reasonableness thus can be seen as taking into account the interest of all.

With this, Scanlon tries to overcome the problems of Rawls's theory with respect to impartiality. Rawls wanted to achieve impartiality with the veil of ignorance, while Scanlon achieves it with the idea of reasonableness. Scanlon says that 'a claim about what it is reasonable for a person to do presupposes a certain body of information and a certain range of reasons which are taken to be relevant, and goes on to make a claim about what those reasons, properly understood, in fact support' (*ibid.*: 192). The idea of reasonableness performs the function of obscuring morally irrelevant information, to employ Rawls's vocabulary. As argued in section 4, it is not necessary that we have no access to the morally irrelevant information. What is required is that we do not have the access to information in a required sense, meaning that we may use it in order to reject what is unreasonable, but must be precluded to draw on it in order to put forward the principles that benefit only us. Reasonableness blocks the kinds of arguments that are not permissible at the ground floor level. In this sense, the reasonable differs from the rational.

All this solely points to the contractual nature in Scanlon's theory. We still do not know when something may be rejected. This is explained by another ingredient of reasonableness – namely, the notion of burden. In the 1982 article (in which he introduced the idea), Scanlon wrote that 'reasonable' should necessarily be joined with the notion of burden. The idea of burden is reflective of

Rawls's idea of separateness of the individual, and its opposition to the utilitarian idea of the aggregation of burden. A utilitarian is interested in a higher than average utility. This means that a utilitarian would be prepared to, as it were, lump all individuals together if this provides higher than average benefits. But this could mean tolerating lower welfare for some if it brings higher welfare to others. A utilitarian would thus be prepared to tolerate an unreasonable burden for some and the absence thereof for others.

In other words, in the Scanlonian 'original position' people are not only motivated by self-interest but also by the respect for others. Suppose, says Scanlon, that somebody holds out a principle that puts me in a very disadvantaged position. Such a position could involve essential bans to pursuing the way of life I regard as valuable. Is it for me reasonable to reject them? If I manage to prove that there is at least one alternative set of principles under which I would be better-off, then my rejection is reasonable. It would be unreasonable, however, to reject the offered principles and go for a set of principles that impose even more severe burden on others, and puts them in an even more disadvantaged position (Scanlon, 1982: 111). If you see that an alternative institutional arrangement brings benefit for me, but that this can be done only if this imposes the burden to you, it is reasonable for you to reject this arrangement.

Habermas and the Discourse Principle

Habermas's debate with Rawls from 1995 could perhaps lead to the conclusion that Habermas himself does not endorse every step of the deontological groundwork I am trying to lay out here.

Habermas namely raised an important remark as to why we should accept liberal principles. Rawls's idea that we all have to do it for different reasons is, in Habermas's view, inadequate. All those affected must, from the beginning, share a common point of view. Thus, in "Reconciliation through the Public Use of Reason" he writes: 'For only when self-understanding of each individual reflects a transcendental consciousness, that is, a universally valid view of the world, would what from my point of view is equally good for all actually be in the interest of each individual' (Habermas, 1998: 57). What Habermas essentially says is that the principles of justice must be adopted for the right reason, not for different reasons, as Rawls suggests by his idea of overlapping consensus (Rawls, 1987).

I claim that the differences between Habermas and Rawls are not that insurmountable (much less than Habermas is prepared to admit when he says that the debate between him and Rawls is a family quarrel), and that Habermas's theory is able to supply the moral foundations for deontological liberalism.

Just like all deontological liberals, Habermas shares the view that the modern world is a disenchanted world settled by divergent conceptions of the good life. This world lacks coordination which is supposed to be achieved by the communicative action of individuals. What Habermas protests against is the detachment of philosophy from real life. 'Practical philosophy has taken basic questions from everyday life in an unmediated way, treating these questions without the objectivating filter of social science. The renunciation of practical reasons signals a break with this naïve normativism' (Habermas, 1996: 9). Criticizing Rawls for laying out an abstract

theory that does not provide actors with sufficient motivation for action, even when there are arguments to the contrary (*ibid.*: 56-63), Habermas's aim is to construct a theory that will be based on the union of theory and practice, at the same time expressing claims to universal truth.

Habermas's own version of liberalism is essentially based on strong epistemological grounds. This epistemological foundations are, in Habermas's view, enabled by the replacement of practical reason with communicative reason. He writes that

[c]ommunicative reason differs from practical reason in that it is no longer ascribed to individual actor or a macro subject at the level of the state or the whole society. Rather what makes communicative reason possible is the linguistic medium through which interactions are woven together and forms of life are structured (Habermas, *ibid.*: 3-4).

Communicative reason operates in every community, but it is to be noted that it can produce true statements only if they are justified to others by abiding by the rules of communicative actions. Yet, what has to be valid 'for us' cannot only have 'us' as a reference point. 'The reference to some *particular* interpretation community settled in its own particular form of life does not suffice.' In order for validity claims to become real, they have to become transcendent in nature and 'independent of the vagaries of me and you' (*ibid.*: 14-5). Habermas says that validity claims are often in conflict in reality because they are too abstract. But this does not mean that their validity must be deprived of its theoretical abstractedness and become exclusively real. Only those validity claims are valid, as it were, that are Janus-faced – namely,

that, as claims, overshoot every context but are, at the same time, raised here and now. Without communicative reason 'participants could not even intend to reach an understanding with one another about something in the world if they did not *presuppose*, on the basis of common (or translatable) language, that they conferred identical meanings on expression they employed' (*ibid.*: 19). Any raised validity claim can be valid only if it is justified within a certain social context. The tension between facts and norms arises precisely when 'the validity of true scientific statements enters into the facticity of the lifeworld' (*ibid.*: 18).

I proceed with Habermas's major worry which is identical to those of every deontological liberal: how to justify political principles so that even those who initially do not admit of them have good reason to adopt them. We, in other words, have to include others in arguing for political principles. To this purpose, he offers what he calls discourse principle (D) to the effect that 'just those action norms are valid to which all possibly affected persons could agree as participants in rational discourses' (Habermas, 1996: 107; 1998: 42). The (D) is accompanied by another basic principle called the principle of universalization (U), which goes as follows: 'A norm is valid when the foreseeable consequences and side effects of its general observance for the interests and value-orientation of each individual could be jointly accepted by all concerned without coercion' (Habermas, 1998: 42). This is, I claim, another variety of Rawls's concept of the strains of commitment, or Scanlon's test of reasonable rejection.

One of the features of deontological liberalism is that liberal principles are derived from a construction. One of the basic tenets in the construction is that

whatever comes out of a construction counts as just (Barry, 1989: 264-271). When Habermas says that, according to the discourse principle, 'only those norms can claim validity that could meet with the agreement of all those concerned in their capacity as participants in a practical discourse,' he is actually saying that whatever comes out will be acceptable (i.e. just). But the major feature of (D) and (U) is that they both abide by what was mentioned as the fundamental liberal idea: that people are in some fundamental sense equal. The first indicator for this is the idea that everyone has a veto to the principles that will regulate the basic structure of society. (D) is just another way of saying that no principle is agreed by anyone as long as it is not demonstrated to be acceptable to everyone.

Second, Habermas does not immediately discuss what kind of political principles he has in mind, but it is obvious that all those who can be said to have a legitimate concern about these principles must have a final say over them. Thus, if (D) is employed to operate in an original position, it seems clear that it could bring about the just result only if it respects the initial equality among the parties, or if it gives equal respect for everyone's conception of the good. (D) is neutral among various conceptions of the good and satisfies the requirement of impartiality. What (D) substantially provides for, then, is not an *a priori* limitations of 'the kinds of issues and contributions and the sorts of reasons that "count" in each case.' Its appeal lies in the fact that it gives everyone equal consideration, thereby treating equally 'all those who are possibly involved' (Habermas, 1996: 107-108)

Equality is the cornerstone of the Habermasian 'original position.' It is em-

bedded in communicative reason that in broad terms sets the constraints to the moral argument with which it can defend the principles of justice. Rawls says that no principle is legitimate if it is derived from morally contingent facts. Scanlon says that a principle is wrong if it can be reasonably rejected. And Habermas says that the principle can be accepted only if all those affected by it could agree in a rational discourse. Note that what does the job in Habermas's case is not the very idea that everyone has a chance to turn the principles down. The idea is rather to work out the conditions under which the proposed principles can be rejected. In Rawls's case these conditions are exemplified by the strains of commitment; in Scanlon's, by the concept of reasonableness; in Habermas's view, they are set by communicative reason. Communicative reason is a concept of which every participant in a rational discourse is aware. Discourse rules mandate that the interest of each is taken into consideration in an equal manner. Everyone has the right to express themselves and defend their conceptions of the good in front of others.

Conclusion

The major claim of this essay is that the principles – which will be accepted at the ground floor within which the strains of commitment, reasonable rejection, or the discourse principle have a dominant status – are the principles that reflect the idea of equality. In all three discussed cases, we notice essentially the same claim: namely, that there are certain constraints on putting forward arguments, or that burden cannot be imposed on other people that would limit their ability to defend their conception of the good when discussing principles for a just society. Equality here implies

that people have some definite life plans and that they want to pursue these life plans in real life. Only these principles that will allow them to pursue them are acceptable. But if such principles are to be found by respecting the moral constraints formulated by Rawls, Scanlon or

Habermas, then the equality of individuals seems to be the only fundamental ideal by which the parties are situated because only this ideal will ensure that individuals will be able to select the principles enabling them to pursue their life plans without essential obstacles.

LITERATURE

- Arato, A. (2000) *Civil Society, Constitution, and Legitimacy*. Lanham, Plymouth: Rowman & Littlefield Publishers.
- Barry, B. (1989). *Theories of Justice*. London: Harvester-Wheatsheaf.
- Barry, B. (1995a) *Justice as Impartiality*. Oxford: Clarendon Press.
- Dworkin, R. (1985) *A Matter of Principle*. Cambridge: Harvard University Press.
- Harsanyi, J. (1975) Can the Maximin Principle Serve as a Basis for Morality? A Critique of John Rawls's Theory. *The American Political Science Review* 69: 594-606.
- Habermas, J. (1996) *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*. Cambridge: MIT Press.
- Habermas, J. (1998) *The Inclusion of Others*. Cambridge: MIT Press.
- Kis, János (1997) Neutrality of the State: A Defense. (Unpublished Manuscript.)
- Kis, János (2012) *State Neutrality*. Berlin: Social Science research Center Berlin. (<http://bibliothek.wzb.eu/pdf/2012/iv12-801.pdf> (Accessed on July 1, 2013))
- Kymlicka, W. (1989) *Liberalism, Community, and Culture*. Oxford: Clarendon Press.
- Kymlicka, W. (1995) *Multicultural Citizenship*. Oxford: Clarendon Press.
- Lister, A. (2013) *Public Reason and Political Community*. Bloomsbury Academic.
- Nagel, T. (1981) Libertarianism Without Foundations, in: Paul, Jeffrey [Ed.] *Reading Nozick: Essays on Anarchy, State and Utopia*. Oxford: Basil Blackwell.
- Nagel, T. (1973) Rawls on Justice, in: Daniels, Norman [Ed.] (1989) *Reading Rawls*. Stanford: Stanford University Press.
- Parekh, B. (2000) *Rethinking Multiculturalism*. Hampshire: Macmillan Press Ltd.
- Parfit, D. (1997) Equality and Priority. *Ratio*, Volume 10, Issue 3: 202-221.
- Raz, J. (1986) *The Morality of Freedom*. Oxford: Clarendon Press.
- Rawls, J. (1958) Justice as Fairness. *Philosophical Review* 67: 164-94.
- Rawls, J. (1971) *A Theory of Justice*. Oxford: Oxford University Press.
- Rawls, J. (1987) The Idea of the Overlapping Consensus, in: Rawls, John (1999) *Collected Papers*. Cambridge: Harvard University Press.
- Rawls, J. (1993) *Political Liberalism*. New York: Columbia University Press.

- Rawls, J. (1999a) *The Law of Peoples*. Cambridge: Harvard University Press.
- Rawls, J. (2001) *A Theory of Justice: A Restatement*. Belknap Press.
- Scanlon, T. (1982) Contractualism and Utilitarianism, in: Sen Amartya, Williams Bernard [Eds.] *Utilitarianism and Beyond*. Cambridge: Cambridge University Press.
- Scanlon, T. (1998) *What We Owe To Each Other*. The Belknap Press of Harvard University Press.
- Wall, S. and George K. (2003) *Perfectionism and Neutrality: Essays in Liberal Theory*. Rowman & Littlefield Publishers.
- Quong, J. (2011) *Liberalism Without Perfection*. Oxford: Oxford University Press.

Moralni temelji suvremenog liberalizma

Sažetak Esej propituje temelje suvremenog liberalizma. Autor brani sljedeću tezu. Premise suvremene liberalne teorije ne mogu izbjeći referiranje na ideal jednakosti pojedinaca. Jednakost je načelo na kojem se temelji teorija iz koje se izvode principi potrebni za organiziranje liberalnih institucija. Da bi obranio ovu tezu, autor razlikuje opravdavajući od perfekcionistačkog liberalizma, te razmatra neke od najutjecajnijih teorija suvremene političke filozofije koje nude etičke temelje suvremenom liberalizmu.

Ključne riječi Suvremeni liberalizam, perfekcionizam, nepristranost, neutralnost, jednakost