THE REVISED THEORY OF JUSTICE
AS FAIRNESS AND MICHAEL SANDEL

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Abstract. The study focuses on the main co-ordinates of the revised Rawlsian theory of justice liable to be interpreted as effects of communitarian critiques. The assumption of this research is that the liberalism of the "late" Rawlsian studies, as political liberalism, despite the absence of some explicit referrings to communitarianism, reflects an important connection with the communitarian criticisms applied to the theory of justice as fairness expounded in *A Theory of Justice*.

Keywords: *political conception of justice*; *political conception of person*; *idea of reasonable pluralism*; *overlapping consensus*; *public reason*; *political constructivism*.

The assumption of this paper is that the liberalism of Rawls' "late" work, as *political liberalism* – the result of a process of clarification, nuancing and reconsideration carried out by the author over two decades – reflects, despite its lack of explicit references to communitarianism, an important connection with the communitarian criticisms applied to *A Theory of Justice*[1]. In this sense, the *revised* theory of justice as fairness is understood as both an attempt to renounce some problematic aspects of the theoretical construction discussed in communitarian critiques and an explanation, from the deontological liberalism perspective, of the conditions of validity of some communitarian ideas. This assumption is subsumable to those positions, affirmed in the liberalism-communitarian dispute, that sustain the existence of a Rawlsian "response" to the communitarian objections[2], the existence of a Rawlsian reaction to the "third wave" of the debate raised by *A Theory of Justice* – "an argument that had flourished in the 1980s and 19990s under the somewhat misleading label of the

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[1] I referred to the theme of this paper in „Disputa liberalism–comunitarism. Schița reacției liberale la comunitarism" (II), *Revista de Științe Politice și Relații Internaționale*, nr. 1/2007, pp. 43-56.
[2] See in this regard mainly Stephen Mulhall and Adam Swift, "Rawls's Response," in *Liberals and Communitarians*, second edition, Blackwell Publishing, 2003, pp.167-247, and Shlomo Avineri and Avner de-Shalit, „Introduction," in *Communitarianism and Individualism*, edited by Shlomo Avineri and Avner De-Shalit, New York, Oxford University Press, 1999, pp. 1-11.

liberal-communitarian debate"[3] – and, in part, to those which motivate Rawlsian concessions in favour of communitarianism[4]. Decantation of the influence of communitarianism on the studies published by Rawls after 1982, considered by the author himself to be significant for the unity of the revised conception of justice or for the political conception of justice, requires a brief prior examination of the changes contained in Rawlsian studies published before the most important critical work "of a communitarian nature" to be published, namely Michael J Sandel's *Liberalism and the Limits of Justice* (1982).

Liberalism of procedural interpretation

John Rawls, who "inspired" and nurtured the critical communitarian reactions, reacted to communitarianism in an implicit way. He did not criticize communitarianism, but made changes in his own theory of justice.

Before examining the connection of these changes with the comments formulated by the authors categorized as communitarian, it should be noted that the revision process of the work *A Theory of Justice*[5], become notorious, was started by Rawls during the period preceding the publication of communitarian criticisms. During this time, through a series of studies[6], the author of the famous work sought to clarify and nuance the position expressed in 1971 and, thereby, to respond to various critical comments of a methodological, epistemological and philosophical nature in the broadest sense, as well as to liberal and libertarian critical approaches. Hereupon, is required the specification that it was not communitarian criticisms which triggered and motivated the changes of Rawlsian theory *as a whole*; but that, on the background of the unprecedented reception which *A Theory of Justice* enjoyed among both "professional philosophers" and "non-professionals"[7], it outlined the defining directions of a new philosophical-political perspective whose impact is detectable in some of the directions of reinterpretation or theoretical redefinition to which Rawls resorted in his "late" work.

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[3] Michael J. Sandel, "A Response to Rawls' Political Liberalism", the final chapter of the second edition of *Liberalism and the Limits of Justice*, Cambridge University Press, 1998, p. 186.

[4] See Daniel Bell, *Communitarianism and its Critics*, Oxford, Clarendon Press, 1996.

[5] Prefigured in "Justice as Fairness" published in 1957 in *The Journal of Philosophy* (nr. 22).

[6] See in this regard "Reply to Lyons and Teilelman" (1972), "Distributive Justice" in vol. *Economic Justice* (1973) edited by E.S.Phelps, "Some Reasons for the Maximin Criterion" (1974), "Reply to Alexander and Musgrave" (1974), "The Independence of Moral Theory" (1975), "A Kantian Conception of Equality" in vol. *Post-Analytic Philosophy* (1975) edited by J. Rajchman and C. West, "Fairness to Goodness" (1975), "The Basic Structure as Subject" in vol. *Values and Morals* (1978) edited by AI. Goldman and J. Kim, "The Concept of Justice in Political Economy" (1979), "Kantian Constructivism in Moral Theory" (1980), "Social Unity and Primary Goods" in vol. *Utilitarianism and Beyond* (1982) edited by A. Sen and B. Williams, "The Basic Liberties and their Priority" in vol. *Liberty, Equality and Law* (1983) edited by S. M. McMurrin.

[7] See in this regard Norman Daniels, *Introduction* in vol. *Reading Rawls. Critical Studies on Rawls'* A Theory of Justice, edited with an introduction by Norman Daniels, New York, Basic Books, Inc, Publishers, 1975, p. XIsqq. Despite this wide reception, the work was "a product of the 'philosophical academy" what it represented "a contribution to the more technical tradition in moral philosophy" and the unfolding of a "sophisticated apparatus". It was considered as "one of those books, rare but essential to philosophy... [it] providing a new vocabulary that will no doubt be used even in criticism of its own arguments". Ronald Dworkin, "Social Contract," *Sunday Times*, London, 9 July 1972, *apud* Norman Daniels, *op. cit*., pp. XII-XIII.

The motivation for the "changes of emphasis" in Rawlsian theory before 1982[8] was that of "acknowledging" in *A Theory of Justice* some errors of exposition and some obscure and ambiguous passages that could generate misunderstandings. Prior to the publication of the 1980 Dewey Lectures entitled "Kantian Constructivism in Moral Theory" and of the 1982 Tanner Course entitled "Basic Liberties and Their Priority", Rawls had already returned, in "Basic Structure as a Subject" (1978) to the "main subject of justice," namely the *basic structure*[9] as an institutional expression or as a public form of manifestation of the freedom and equality of persons. He also returned to the "conversion" of the fairness of the circumstances into fairness of the principles with reference to *pure procedural justice*[10] (or the transfer to the principles of justice of most of the constituent elements of procedural justice) and to the incorporation into the theory of justice of an *ideal form* of the basic structure, according to which the cumulative results of the social process or institutional processes be limited and the results of individual transactions adjusted. The ideal form of the basic structure (or the structural ideal of a perfectly fair society) appears as being complementary to pure procedural justice (or the non-ideal theory that sustains the permanent necessity of adjustments in situations where injustices occur). The role of the ideal form of background institutions (which, obviously, transcends the existence of situations of injustice) is to constitute the "rational basis" for the continuous adjustment of the social process and the elimination of injustice. As such, a pure procedural theory proves its usefulness only if it contains structural principles for a fair social order, so that "in our world" the political goal of eliminating injustice and of directing change towards a fair basic structure becomes attainable. According to Rawls, the thesis that "the primary subject of justice is the basic structure of society, which has the fundamental task of establishing the *background justice*"[11] constituted an argument capable of confronting the Hegelian-origin criticisms brought to the "Kantian form of contract doctrine" or to the form of rational agreement between free and equal moral persons that Rawls had assumed in *A Theory of Justice*, and which regarded, among other things, the failure to recognize the social nature of human beings, their dependence on or their evolution in relation to society. In this text

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[8] The year of publication of Michael J. Sandel's *Liberalism and the Limits of Justice*, one of the most significant critical approaches subsumable to philosophical communitarianism, in chronological order the first in the series of those considered representative in the affirmation of communitarianism by "reaction" to the Rawlsian theory of justice.

[9] Defined, in a revised formulation, in *Political Liberalism*, as "the way in which the major social institutions fit together into one system, and how they assign fundamental rights and duties and shape the division of advantages that arises through social cooperation." See "The Basic Structure as Subject," Lecture VII in John Rawls, *Political Liberalism*, New York, Columbia University Press, 1996 (1993), p. 258.

[10] In *A Theory of Justice* defined as "a correct or fair procedure" of determination of a correct or fair outcome under the conditions in which "there is no independent criterion for the right result..., provided that the procedure has been properly followed." See John Rawls, *A Theory of Justice*, Cambridge, Massachusetts, London, England, The Belknap Press of Harvard University Press, 2005 (1971), p. 86.

[11] *Idem*, *Liberalismul politic*, *ed. cit*., p. 286. *Background justice* or of the social context concerns the organizing of basic structure that had to be judged from a general point of view. See *ibidem*, p. 265.

Rawls considered the *original position* as a fair agreement between free and equal moral persons and as a possibility of adapting the social nature of people. The *original position* was thus defined as a moral conception that ensures a suitable place to social values starting from an individualistic base and maintaining this individualistic requirement, namely without sacrificing the individuals' freedom and integrity. By the notion of original position Rawls meant[12] to realize the procedural interpretation of the Kantian doctrine, namely the intention to produce a mutation by which the Kantian doctrine be detached from transcendental idealism (source of vulnerability of contract theory) and attached to a "reasonable empiricist framework."

In "Kantian Constructivism in Moral Theory" (1980) the revision of the theory of justice targeted what Rawls called *primary goods* in favour of the idea that they depend on a "particular conception of persons and their *higher-order interests*" which implies a conception of society as a fair system of cooperation. Unlike the connotation in *A Theory of Justice* – that of primary goods consisting of what a rational being could want (regardless of any other desires), namely rights, freedoms, possibilities or opportunities, income, and wealth –, the connotation of primary goods since 1980 is subsumed to a moral conception that embodies a certain ideal and becomes that of the needs of people in their capacity as moral persons. As members of society, the moral persons are those who can cooperate for mutual benefit (not just as rational individuals who have desires and goals), namely people who are characterized by *two moral powers* indispensable for the quality of citizens: the capacity for a conception of the good or for their own rational advantage (but also "for us as a worthwhile human life") and the capacity to have a sense of justice or to understand, to apply and to be moved by an effective desire to act from the principles of justice as the fair terms of social cooperation.

Two years later, in "Basic Liberties and Their Priority" (1982)[13] – that announces important changes in the description of freedom, of the link between fundamental freedoms and their priority and of the *equitable terms of cooperation*[14] between equal people –, the mutation realized in „Kantian Constructivism" is reassumed by specifying that justice as fairness aims to

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[12] As already announced in "A Kantian Conception of Equality" (1975), Ralws intended to abandon the Kantian dualisms: necessary and contingent, form and content, reason and desire, *noumena* and *phenomena*, to reinterpret them in order to make "more clearly discernible" the characteristic structure of the Kantian moral conception and to reformulate "their moral force... within the scope of an empirical theory." See John Rawls, "A Kantian Conception of Equality," in *Post-Analytic Philosophy*, edited by John Rajchman and Cornel West, New York, Columbia University Press, 1985, p. 211.

[13] A response to H. A. Hart's critical study "Rawls on Liberty and Its Priority" (*University of Chicago Law Review*, no. 40/1973, included in *Reading Rawls. Critical Studies on Rawls' A Theory of Justice, ed. cit.*, pp. 81-103) which comprised the appreciation on Rawls' typical mode of relating to the "four problems": philosophical methodology, ethical analysis, moral methodology and moral normative issues.

[14] The fair terms of social cooperation specify the content of a political and social conception of justice, namely the terms in which equal people are willing to cooperate conscientiously with the other members of society over their whole life on the basis of mutual respect. They articulate an idea of reciprocity, what Rawls calls "the reasonable." "The rational," the other element, refers to each participant's rational advantage.

achieve a conception of social and political justice of which the political conception of person[15] is a part. In the 1982 study, "a certain conception of the person together with a companion conception of social cooperation" – introduced "to try to carry the liberal view one step further"– sustain "the social union [that] is no longer founded on a conception of the good as given by a common religious faith or philosophical doctrine, but on a shared public conception on justice appropriate to the conception of citizens in a democratic state as free and equal persons."[16] The concept that connects the conception of the person and the conception of social cooperation with certain principles of justice (specifying the fair terms of cooperation) is that of *original position* which designates the position of the parties or rationally autonomous representatives of citizens in society. Rawls distinguishes within the original position – "the full conception of the person" – the two powers of moral personality: "the capacity to be reasonable" and "the capacity to be rational". By participating in the agreement on those principles considered the best for those represented, the parties of the original position, as rationally autonomous representatives of persons in society, are considered representative only for the rational aspect. As to "the reasonable" or the capacity to honour fair terms of social cooperation, Rawls specifies the representation by the various restrictions to which the parties are subject in their original position, and by the conditions imposed on their agreement. Affirmations and action in accordance with them give the quality of a full autonomous person. According to Rawls, full autonomy includes in addition to the "capacity to be rational and… the determinate conception of the good we have at any given time," also the capacity to promote our conception of good in ways compatible with the observance of the terms of social cooperation, that is, with the principles of justice. The extent to which political life reflects the conception of the person by virtue of which the capacity for social cooperation is fundamental is the extent to which the equal citizens of a well-ordered society are fully autonomous, that is, the extent to which "they freely accept the constraints of the reasonable."[17] Rawls sustains the net advantage of a fair scheme of social cooperation ("made stable by an effective public sense") which includes citizens' determinate conceptions of the good. However, the issue of comparative assessment of the stability of traditional principles of justice is considered too complicated and is replaced by the issue of the fundamental importance of self-respect. The two principles of justice, with an emphasis on the equal basic liberties and the priority assigned them – "further strengthened and supported by the fair value of the political liberties and the difference principle" –, are considered by Rawls to be the most effective means of encouraging and supporting self-respect.

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[15] The political conception of the person, different from the ideal accepted in certain associations or from the moral ideal, defines the mode of citizens' manifestations in political and social relationships as specified by the basic structure. See John Rawls, "Basic Liberties and Their Priority", Lecture VIII, in *Political Liberalism*, *ed.cit*., p. 300.

[16] *Ibidem*, p. 304.

[17] *Ibidem*, p. 306.

The theoretical parcourse circumscribed by the concept of moral person, the particular conception of persons and their interests, the political conception of the person, with implications on the connotation of the concept of original position in the overall construction of the theory of justice contains changes that sought to remedy some of the notified incompatibilities of the 1971 work and which prepared the Rawlsian "late" conception of political liberalism. In his introduction to *Political Liberalism* (1993), Rawls confessed that he had to resolve the inconsistence of "the account of stability" from the part III of *A Theory of Justice* with the view as a whole and the "unrealistic idea of a well-ordered society as it appears in *Theory*" ("idea of a well-ordered society of justice as fairness") – "inconsistent with realizing its own principles under the best of foreseeable conditions". Also Rawls specified that this "recasting" ("change" that in turn "forces many other changes")[18] "set the stage for the latter essays beginning in 1980" that removed the ambiguity of *Theory* and presented "justice as fairness" "as a political conception of justice"[19]. The author also specified that after 1982, in order to give the homogeneity that was lacking in his studies, he wrote the courses that, starting with "Justice as Fairness: Political not Metaphysical" (1985) and continuing with "The Idea of an Overlapping Consensus" (1987), „The Priority of Right and Ideas of Good" (1988) and "Domain of the Political and Overlapping Consensus" (1989), outlined *political liberalism* as a conception of political justice in a democratic regime sustained by a plurality of reasonable doctrines. Rawls acknowledged that these major revisions, especially those aimed at the political conception of the person and the idea of reasonable pluralism, formed the basis of his political constructivism, attracted revisions of the basic elements and the introduction of a whole family of ideas, mainly that of a political conception of justice which is in opposition with the comprehensive doctrine, that of an overlapping consensus and that of public reason.

Thus, after 1982, Rawls opened a series of studies that definitized the general philosophical background of his political liberalism or of the revised conception of justice – "how I *now* understand justice as fairness" – and which argued a theory of justice as an expression of a political constructivism distinct from Kant's moral constructivism[20], after the changes imposed by the various objections to *A Theory of Justice*. Among them, the objections which targeted the apriorism, universalism, and deontology that competed in creating a "neo-

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[18] As he "recast" in "Basic Structure as Subject" (1977) and "Basic Liberties and Their Priority" (1982) which compose Part III of the *Political Liberalism*.

[19] John Rawls, "Introduction," *op. cit*., p. XV, p. XVI, p. XVII.

[20] Rawls defined Kantian moral constructivism in its specific difference from his political constructivism, (1) as a comprehensive moral view in which the ideal of autonomy has a regulative role for all of life ("it is not suitable to provide a public basis of justification"), (2) as a vision of constitutive autonomy, according to which the order of moral and political values must be constituted by the principles and conceptions of practical reason, as part of transcendental idealism, (3) as a basic conception of person (having a foundation in transcendental idealism) which is a comprehensive vision outside politics, (4) in order to present the coherence and unity of reason, both theoretical and practical, with itself, of "the reason as final court of appeal, as alone competent to settle all questions about the scope and limits of its own authority." *Ibidem*, pp. 99-101.

Kantian-inspired" liberalism, the individualism of the "detached self" through the *veil of ignorance* (as a reverse of a social- cultural- and moral-constructionist conception of the self), the atomism of "one's own good and one's own rational advantage," the idealization of individual autonomy, were mainly communitarian-inspired criticisms.

Liberalism and deontological ethics

The publication of "Justice as Fairness: Political not Metaphysical" (1985) was preceded by Michael J. Sandel's *Liberalism and the Limits of Justice* (1982) appearance, one of the most radical critical positions on the theory of justice as fairness. Sandel's book examined critically, through its own conceptual apparatus[21], Rawlsian deontological liberalism as the "full expression" of contemporary "revisionist" deontology that "embraces the priority of the right over the good and even affirms the priority of the self over its ends." According to Sandel, Rawlsian deontology represented a "sympathetic reformulation" of the Kantian conception of justice by detaching it from its transcendental idealistic background and reconstructing it within the canons of reasonable empiricism. This reference to Kantian deontology – "by replacing German obscurities with a domesticated metaphysic less vulnerable to the charge of arbitrariness and more congenial to the Anglo-American temper" –, combined with the proposal to derive the first principles from a hypothetical choice situation ("original position"), a proposal not sustained by the idea of a "kingdom of ends but the ordinary circumstances of justice – as borrowed from Hume" –, revealed in Rawls, according to Sandel, a "deontology with a Humean face."[22]

In *Liberalism and the Limits of Justice* Sandel considered the Rawlsian *self* as being "irreducibly, prior to his values and ends, and never fully constituted by them", in Rawls "man's sovereign agency as such" not being "dependent on any particular conditions of existence, but guaranteed in advance."[23] As such, Sandel considered that the deontological conception which sustained a *self* never fully constituted by the particular situations and goals, but prior to them, implied considerable consequences on the approach of politics and justice. Defining man as a being who *chooses* his ends, and not as a being who *discovers* them, as it appeared to the ancients, revealed as a "fundamental preference" not the condition of individual self-knowledge, but the conditions of choice and, predominantly, the conditions of action in accordance with a sense of justice. According to Sandel, these were intended to be the basis of the primacy of justice, of the establishment of concept of justice with a constitutive character in the order of the *self*, as "the first virtue of social institutions"[24] and, consequently, the motivation of a *qualitatively higher order*. In reconstructing the logic of this argument, the rational nature of the "free and equal being"

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[21] An original conceptual apparatus is largely representative also for other important exponents of philosophical communitarianism.
[22] Michael J. Sandel, *Liberalism and the Limits of Justice*, second edition, Cambridge, Cambridge University Press, 1998 (1982), pp. 13-14.
[23] *Ibidem*, p. 22.
[24] *Ibidem.*

appears in Rawls as being fully realized only by action, in accordance with the priority principles of the right and justice. This conception of the self has associated, according to Sandel, difficulties to the deontological liberalism. The problem with the Rawlsian deontological project and, implicitly, with Rawls's "response to Kant" or with his aspiration to reformulate Kantian morals and political claims within the framework and for the purpose of an empiricist theory was, according to Sandel, that it did not provide a foundation for deontological liberalism as substitute for the questionable "metaphysical *surroundings*" of Kantian theory. Rawls' attempt to detach himself from "the metaphysical *surroundings*" of the "inescapable presuppositions of moral and political aspirations" (which he shared with Kant), in other words, his attempt to obtain "liberal politics without metaphysical embarrassment" is one of the great problems created by his conception of the *self*. The attempt to "save the deontological liberalism" against "the difficulties of the Kantian self"[25] fails, according to Sandel, because within the limits of a "deontology with Humean face" Rawls "recreates in the *original position* the disembodied subject it resolves to avoid."[26] In particular, Sandel considered that the description of the original position is not accommodated and does not sustain the claim for the primacy of justice in the strong sense, and a "straightforward empiricist interpretation that Rawls himself invites, it cannot support the deontological claim"[27].

Rawlsian revised liberalism

In his studies published after 1982, Rawls did not answer explicitly to the criticisms of communitarian "inspiration," nor did he make references to communitarian theses or books, but made changes and revisions in his own theory of justice which, at least in part, could be connected with communitarian criticisms. Although his article "Justice as Fairness: Political not Metaphysical" (1985)[28] has been widely interpreted as a response to Michael Sandel's critical work[29] *Liberalism and the Limits of Justice*, Sandel is mentioned only once, in the last note in which Rawls mentions what he considers to be a "mistake" of his: the supposition that "the *original position* involves a conception of the self 'shorn of all its contingently-given attributes', a self that 'assumes a kind of supra-empirical status... and given prior to its ends, a pure subject of agency and possession, ultimately thin'."[30] Rawls did not try to counterargument Sandel's

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[25] *Ibidem*, p. 14.
[26] *Ibidem.*
[27] *Ibidem*, p. 28sqq.
[28] Published in *Philosophy & Public Affairs*, Summer 1985, 14(3), pp. 223-251; comprised also in Shlomo Avineri and Avner de-Shalit (eds.), *Communitarianism and Individualism*, pp. 186-205, and, under the title „La théorie de la justice comme équité: une théorie politique et non pas métaphysique", included in John Rawls, *Justice et démocratie*, introduction, présentation et glossaire de Catherine Audard, traduit de l'anglais par C.Audard, P. De Lara, F. Piron et A Tchoudnowsky, Édition du Seuil, 1993, pp. 203-243.
[29] See in this regard Daniel Bell, *op.cit.*, p. 18.
[30] John Rawls, "Justice as Fairness. Political not Metaphysical," in *Communitarianism and Individualism*, note 21, p. 204. See the full quote (which also contains the syntagma "essentially unencumbered," with reference to the supra-empirical status of the self) in Michael J. Sandel, *op. cit.*, p. 94.

"misunderstanding," but only catalogued it expeditiously, minimizing to a large extent one of the most rigorous and original critical interpretations of his theory of justice. Later, in 1992, in his "Introduction" to *Political Liberalism*, Rawls rejected, also in a footnote, the interpretations according to which the modifications brought to his theory and included in the essays subsequent to his 1971 work[31] would represent "replies to criticisms raised by communitarians and others."[32] The "major change" that marked *Political Liberalism* in comparison with *A Theory of Justice* is explained as being generated by attempts "to solve a serious internal problem to justice as fairness," namely the inconsistency between the description of stability and the overall vision of the work and the lack of realism of the idea of a well-ordered society. The "extensive revisions" or the revisions of "basic elements" – the idea of a political conception of justice as opposed to the comprehensive doctrines, the idea of a consensus by *overlapping consensus* and that of public reason, the idea of political conception of the person and the idea of reasonable pluralism as opposed to simple pluralism – are motivated as effects engaged by the effort to correct "serious internal problems." However, before mentioning the authors to whom he is indebted for instructive discussions and suggestions[33] on fundamental aspects of his theory of political liberalism – such as: political constructivism, the idea of justice as fairness as an independent vision, the idea of a reasonable comprehensive doctrine, simple and reasonable pluralism etc. –, Rawls returned to the criticisms of his *Theory* which held that "the kind of liberalism it represents is intrinsically faulty because it relies on an abstract conception of the person and uses an individualist, non-social, idea of human nature..."[34]

The unnamed communitarian criticisms are considered to be caused by the non-identification of the idea of original position with a procedure of representation, but, after the specification that the changes to his 1971 *Theory* – by which his theory of justice as fairness became a form of political liberalism – were due to serious internal problems, he added ambiguously enough: "I do not mean, however, to give an account of how and why those changes were actually made. I don't think I really know why I took the course I did. Any story I would tell is likely to be fiction, merely what I want to believe."[35] Rawls

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[31] Among the studies ("Lectures", as Rawls calls them) recognized as particularly important for the revision of his theory, included also in *Political Liberalism*, are: "Basic Structure of Subject" (1978), "Kantian Constructivism in Moral Theory" (1980), "Basic Liberties and Their Priority" (1982), "Social Unity and Primary Goods" (1982), "Justice as Fairness: Political not Metaphysical" (1985), "The Idea of an Overlapping Consensus" (1987), "Ideas of Good" (1988), "Domain of the Political" (1989). To these was added in *Political Liberalism* just the study "Public Reason", published for the first time.

[32] See John Rawls, "Introduction," *Political Liberalism*, *ed. cit*., p. XVII.

[33] Among those whom Rawls felt indebted to for instructive discussions and suggestions, a special place is occupied by T. M. Scanlon, Ronald Dworkin and Thomas Nagel – those considered by Charles Taylor (in "Cross-Purposes:The Liberal-Communitarian Debate", in *Philosophical Argument*, Cambridge and London, Harvard University Press, 1995, p. 181) as members of the team L, together with Rawls –, Davis Sachs, Samuel Scheffer, Tyler Burge, Wilfried Hinsch, Joshua Cohen ş.a.

[34] John Rawls, "Introduction," *Political Liberalism*, *ed. cit*., p. XXIX.

[35] *Ibidem*, pp. XXX.

concluded that after criticisms were formulated on some of the ideas he used –
such as the political conception of justice and overlapping consensus, distinctive
for his "late" conception –, he identified "some missing pieces, essential for a
convincing statement of political liberalism," namely "(1) the idea of justice as
fairness as a freestanding view and that of an overlapping consensus as
belonging to its account of stability; (2) the distinction between simple pluralism
and reasonable pluralism, together with the idea of a reasonable comprehensible;
and (3) a fuller account of the reasonable and the rational worked into the
conception of political (as opposed to moral) constructivism, so as to bring out
the bases of the principles of right and justice in practical reason."[36] In the 1992
book, also in a note, Michael Sandel and his „important work"[37] are mentioned
for attributing a metaphysical conception of the person to *Theory*, a
„misunderstanding" favoured by the abstractness of original position as "a
device of representation." In reply, Rawls identified his political liberalism as
different from liberalism understood as a comprehensive doctrine. If in 1985
Rawls defined his conception of justice as fairness as "political and not
metaphysical;" in the subsequent reconstruction of the theory he opted for its
identification in terms of "non-comprehensive political conception," the
comprehensive referring here to moral and philosophical doctrines and not to
what, in metaphysical perspective, would mean the ontological position
regarding the essence of human beings. The distinction between political
liberalism and liberalism as part of a comprehensible moral doctrine –
acknowledged as being present in the liberalism of *A Theory of Justice*, through
arrangements designed in the name of moral ideals (such as autonomy,
individuality, or self-confidence) – and the option for political liberalism in his
conception of justice, equivalent to the option for "priority of the right over the
good," of the rights over the concept of good, had as arguments the neutrality of
the principles of justice in relation to moral and religious controversies,
impartiality, and agreement with the principle of tolerance.

This option can reveal that Rawls considered the political-comprehensive
dichotomy or the use of the comprehensive in counterbalance to the political – a
wider extension than that of metaphysics – as able to avoid, if not to remove and
even to make superfluous the criticisms of communitarian-origin on the person,
on the *self*. In reaction to Sandel's critique of the concept of original position,
which involved a concept of the free and equal person detached from his priority
moral ties and able to choose his own goals – the *unencumbered self* –, Rawls
asserted only that Sandel did not understand that the original position is
conceived as a process of representation and understanding of a persons'
interests and abilities. According to Sandel, in doing so, Rawls preferred to

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36 *Ibidem.*
37 *Ibidem*, „Political liberalism: basic elements", Lecture I, p. 27. Apart from Sandel, only Michael Walzer
and his work *Spheres of Justice* are mentioned in a note (p. 44) for the vision (usefully revised by Joshua
Cohen, in Rawls' view) in which he conceives the beginning of political philosophy, a vision which "does not
differ essentially from Plato, Kant, and Sidwick," but only in the finality assumed by Walzer to be our shared
understandings. *Ibidem*, p. 44.

detach himself from the Kantian conception of the person as a moral ideal and to argue for a liberalism that did not depend at all on the conception of the person[38] or which totally removed it in favour of the quality of citizen. Besides, the political conception of the person or of the personal identity as civic identity refers only to "public identity" which does not interfere in any way with the particular conceptions on individual goals and values. Only the non-public identity is the one that circumscribes personal goals and attachments, loyalties and commitments. Only the non-public, personal identity can reflect the idea of religious, moral, philosophical dependence; but, as such, it has no relevance in terms of objective evaluation. The public identity, on the contrary, independent of any loyalties and moral attachments (or conceptions of the good), that of the "detached" self, can be the source of validity in the public culture of democratic society.

It could be asserted, I think, that the Rawlsian approach undertaken to substantiate this thesis was predominantly triggered by communitarian critiques, mainly the one due to Sandel. Rawls's arguments in favour of a specific political conception are to be seen as intended to "correct" his conception of the person criticized by Sandel. At least in *A Theory of Justice*, this conception was subsumable to a type of liberalism associated with a moral doctrine, in Sandel's expression, a "liberalism as part of a comprehensive moral doctrine"[39]. The conception of the person situated within the framework of political liberalism[40] was meant thus to resolve a previous contradictory situation from a metaphysical perspective and an empiricist interpretation, and to overcome, through this, the communitarian objections on the Rawlsian *self*. The theory of political liberalism and the deontology replaced and transformed the coordinates criticized by communitarians. The most important illustration in this sense is the mutation regarding the conception of the person – from the conception of moral person to the political conception of the person – generated by the specifics of Rawlsian political constructivism.

Rawls considered in 1985 that the mutation which had begun in „Kantian Constructivism in Moral Theory: The Dewey Lectures" (1980)[41] was not based on a purely psychological, sociological, or historical thesis, but represented "a more explicit emphasis on the role of a conception of the person as well as on the idea that the justification of a conception of justice is a practical social task rather than an epistemological or metaphysical problem"[42]. In connection with

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[38] Michael J. Sandel, „A Response to Rawls' Political Liberalism" în *op. cit*., p. 189.

[39] Michael J. Sandel, *op.cit*., p. 189.

[40] In *Political Liberalism* the author stated that "a conception of the person, as I understand it here, is a normative conception, whether legal, political, and moral, or indeed also philosophical or religious, depending on the overall view to which it belongs. In the present case the conception of the person is a moral conception, one that begins from our everyday conception of persons as basic units of thought, deliberation, and responsibility, and adapted to a political conception pf justice and not to a comprehensive doctrine. It is in effect a political conception of the person, and given the aims of justice as fairness, a conception suitable for the basis of democratic citizenship." John Rawls, *Political Liberalism*, *ed. cit*., p. 18.

[41] What Sandel called "voluntarist or broadly Kantian conception of the person" in *op. cit*., p 187.

[42] John Rawls, „Justice as Fairness: Political not Metaphysical," in *Communitarianism and Individualism*, *ed. cit*., p. 187.

this emphasis is put the idea of "Kantian constructivism", "not proposed as Kant's idea" but as "adjective [that] indicates analogy not identity," as adjective "appropriate" to express the resemblance with Kant "in enough fundamental respects," namely "certain structural features of justice as fairness and elements of its content, such as the distinction between what may be called the Reasonable and the Rational, the priority of right, and the role of the conception of the persons as free and equal, and capable of autonomy and so on"[43]. In this order of ideas, Rawls also specified that resemblances of structural features and content should not be wrongly appreciated as resemblances with Kant's views on questions of epistemology and metaphysics and, as a result, the title of the three lectures, „Kantian Constructivism in Moral Theory", was misleading since the conception of justice which they were discussing was a political conception for which a better title would have been "Kantian Constructivism in Political Philosophy". Accordingly, both in "Justice as Fairness: Political not Metaphysical" (1985) and in his further studies Rawls focused on arguments or "changes" designed to avoid the assessment that the concept of justice depends on metaphysical claims, philosophical controversies and religious doctrines, on claims to universal truth or claims about the essential nature and identity of persons. Implicitly, Rawls' effort was turned to the arguments by which the conception of justice – with the structure and content of justice as fairness – can be understood as a political conception.[44]

Political constructivism, as opposed to the one he called Kantian, targeted firstly the principle of political justice that can be constituted as outcome of a certain procedure of construction in which "rational agents, as representatives of citizens and subject to reasonable conditions, select the public principles of justice to regulate the basic structure of society."[45] Secondly, political constructivism has been formulated as a procedure of construction based essentially on practical reason[46] and not on theoretical reason. Thirdly, political constructivism was defined by using a "rather complex" conception of the person and society, in order to give form and structure to its structure of political society understood as a fair system of social cooperation from one generation to another. Finally, political constructivism was specified by the idea of the reasonable applied to concepts and principles, judgments and grounds, persons and institutions. According to Rawls, the idea of reasonable is what makes possible an overlapping consensus of reasonable doctrines in such a way that the concept of truth may not. In this logic, the relation between the reasonable and the concept of truth can be established only through the particular modality of the comprehensive doctrines.

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43 *Ibidem.*
44 See *ibidem*, pp. 186-187.
45 Idem, *Political Liberalism*, *ed.cit.*, pp. 89-90, p. 93.
46 As Rawls pointed out, in Kantian sense practical reason is concerned with the production of objects according to a conception of those objects, while theoretical reason is concerned with the knowledge of given objects. *Ibidem*, p. 93.

Thus, political constructivism appears as the only type of constructivism that provides political liberalism with an appropriate conception of objectivity. Philosophy, which is defined as the search for truth about an independent moral and metaphysical order, cannot provide any "shared functional basis" for a political conception of justice in a democratic society. As has already been shown, in order to avoid this "long-standing problem" of philosophy, the author considered that the problem of truth and the realism-subjectivism controversy on the status of moral and political values must be avoided. This is because philosophical disputes, as well as moral and religious ones, cannot generate consensus. Although particularly important for people, they, as such, cannot be resolved politically. Given the profound differences regarding the faith and the conceptions of good, especially after the Reformation, according to Rawls, no agreement can be reached on religious faith and moral doctrines in basic philosophical matters without state intervention on the basic freedoms. The unique alternative to the principle of tolerance being autocratic power, Rawls considered that „justice as fairness remains deliberately on the surface, when talking from a philosophical perspective". Consequently, only political constructivism, in the tradition of social contract, realizes a conception practicable as objectivity and justifiably founded on public accord about the right reflection". From this perspective, the purpose of a theory of justice can only be the free agreement or reconciliation through public reason and a conception of citizens as free and equal persons that does not involve problems of philosophical psychology and metaphysical doctrine on the nature of the self.

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