

## ***Subjects to Dialogue***

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### **ABSTRACT**

In this paper I examine the political philosophy of B. Ackerman and in particular his conception of neutrality. I argue that in his philosophy of dialogue neutrality has a central place because it is a moral value, and because of its anti-relativistic implications for distributive justice.

### **KEYWORD**

Bruce Ackerman, neutrality, equality, distributive justice, liberal dialogue

1. Looking back at some important events of the contemporary political and ethical reflection, I think that we can say that the foundational efforts have been widely disseminated. My opinion is that, for example, the reflection of Rawls as that of Dworkin or Gauthier shows a strong propensity for the foundation of the liberal community as a right community in a wide moral sense.<sup>1</sup> However, it seems natural to assume that issues of justice require an effort of empirical adjustment inside an empirical framework, otherwise the reasons for pursuing them could remain at least unclear. These empirical efforts can turn away, however, from those foundations that should justify them. It is a risk we always run in every intellectual analysis. Many people are often unsatisfied by general analysis that seem unlikely candidates for building useful tools to use in everyday judgments, that is as a practical guide when we have to decide about the justice or injustice of particular situations. This problem has not only to do with the difficulty of handling effectively accurate factual information, but also focuses on the degree of

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<sup>1</sup> RAWLS, J., *A Theory of Justice*, Oxford University Press, 1971; DWORKIN R., *Taking Rights Seriously*, Harvard University press, 1977; GAUTHIER D., *Morals by Agreement*, Oxford University Press, 1986.

abstraction that it is desirable to achieve in a theoretical elaboration.<sup>2</sup> Moreover, it seems that it is not sufficient to gain concreteness, simply going into the detail. In fact, the deeper you dig in particular, the more you require a more precise definition of the regulatory criteria to be used. This clarification is much higher than that required when it has to deal with more abstract categories, such as those of merit, need, choice, deliberative capacity, and so on. When we have to judge on specific issues we need not only to be addressed to general rules and to specific rules, which tell us which features should be considered as relevant and important, but we need also rules that show us which weight should be assigned to each of these features when benefits and constraints are distributed and imposed. It is neither wrong nor a sign of epistemological pessimism to say that, even with a large number of parameters of relevance, much would still remain to be done to fill out the individual determinations of justice in the perimeter of application of rights, distributive justice, interests, legitimate expectations. One could condense all of this by simply saying that every system of rules, which refers to our social, ethical, and political consensus, requires to be submitted to an interpretation that show its plausibility – according to accepted norms – and generality in the course of its implementation.

The ambition to reconcile theoretical foundation and empirical evidence is, therefore, fully consistent in ethics and in political philosophy too. The idea of Rawls's reflective equilibrium is precisely this, that is the search for a method for balancing generality and exercising individual judgment. Although we can cast many doubt on the method of reflective equilibrium in gaining relevant results, the risk of renouncing to any frame of reference for empirical judgment is even stronger. In fact, on the opposite side, there could be the temptation to dispose of any criterion of judgment that does not reflect anything but prudential considerations. This is Rorty's philosophical pragmatism applied to political philosophy, that makes the defence of political liberalism a kind of aesthetic and/or a sort of ethical rhetoric.<sup>3</sup>

The way you actually try to examine whether a particular act falls within the categories of shared and possibly rational conception of justice

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<sup>2</sup> It is a well known problem in decision theory, where a big quantity of information can prove to be a hindrance to action and problem solving. ELSTER J., *Nuts and Bolts for the Social Science*, Cambridge University Press, 1989.

<sup>3</sup> RORTY R., *Consequences of Pragmatism*, University of Minnesota Press, 1982.

could be described as a middle way between rationalism – à la Rawls–Kant – and prudentialism – à la Gauthier–Hobbes – in order to build coherence between considered judgments, priority rules and individual judgments. When we are engaged in the political–ethical judgment, what is required is not the application of mechanical rules, but rather the exercise of a kind of practical wisdom. This capability is akin to the judgment of taste, in the sense that its core is more in understanding how to judge rightly than in pointing out, immediately and unambiguously, how to reach justice in particular situations. In our society, qualities of impartiality, operated by institutions, and abilities of correcting and mending injustice are elements that sketch the figure of the judge rather than that of the politician. Regarding politicians, we admit, without any scandal, that they are the representatives of partial interests. Both of these figures speak in the name of general interests, but this practice, normal to the judge, is almost never real in the case of politicians, if not when the normativity has the features of the so-called ‘case of exception’.<sup>4</sup>

While it is always difficult to approach facts relating to justice with a good balance between theoretical and empirical attitude, I am persuaded that any appeal to impartiality must retain something of this approach to the problems of right and wrong in its structure of persuasion. Otherwise, many would think that we are not talking about justice anymore. When we try to determine standards and criteria for the application of justice and correction of injustice, what is implicitly recommended is to model ethical–political judgments on the behavior of a fair judge. This is not just a revival of the theory of the impartial spectator. This happens for two reasons. The first reason is related to a kind of loss from the point of view of the original theory of impartial spectator, since there is not a great emphasis on sympathy as a criterion for identification of right ethical–political practices; the second reason is that the identification of a specific procedure for resolving disputes can be transformed into a clear commitment to substantive results.

Bruce Ackerman’s<sup>5</sup> dialogism is precisely the belief that there is a correspondence between appropriate procedures and outcomes, and that the

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<sup>4</sup> SCHMITT C., *Le categorie del ‘politico’*, Il Mulino, 2013..

<sup>5</sup> ACKERMAN B., *Social Justice in the Liberal State*, Yale University press, 1980, hereafter *SJLS*; *What is Neutral About Neutrality*, “Ethics”, 93, 1983, pp. 372–390; *On Getting What We Don’t Deserve*, “Social Philosophy and Policy”, 1983, pp. 60–

rules and results of a certain distribution of goods can be regarded as the outcome of a conversation conducted in an appropriate manner. This assumption is intended by Ackerman as absolutely realistic and certainly not naively irenic. Ackerman's dialogue is intended as a regulated dispute between competing visions of the world with accurate and almost immediate impact for the distributive justice. For Ackerman, our liberal situation may be described as the conscious realization that the struggle for power and scarce resources is always possible. Even when the defense offered by social institutions allows us to turn to occupations that are not immediately connected with the conquest of portions of power, we are never safe from any disputes over things that are inside the circle of our property and/or availability.<sup>6</sup> Obviously, these disputes over things are important as they are deemed relevant to our individual description and many of these goods can be related to something less easily visible, such as social prestige. By Ackerman anyone, at any time, can make a claim on resources which we use at the present time simply contesting our right to use them. As a matter of fact, we are always living inside a potential general competition between agents.<sup>7</sup> This is what always runs through our society in an underground way. It does not mean that blatant and destructive strives are actually going through our liberal societies. Ackerman's interest is not diagnostic, but foundational. From this first assumption – the permanence and presence of

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70; *Reconstructing American Law*, Harvard University Press, 1984; *Neutralities*, in R. Douglass, G. Mara, H. Richardson (eds.), *Liberalism and the Good*, cit., pp.19–43; *Why Dialogue?*, “The Journal of Philosophy”, 1989, pp. 5– 22; *We the People*, Harvard University Press, 1993; *The Future of Liberal Revolution*, Yale University Press, 1994.

<sup>6</sup> *SJLS*, p. 41 “So long as we live, there can be no escape from the struggle for power. Each of us must control his body and the world around it. However modest these personal claims, they are forever at risk in a world of scarce resources. Someone, somewhere, will—if given the chance—take the food that sustains or the heart that beats within. Nor need such acts be attempted for frivolous reasons—perhaps my heart is the only thing that will save a great woman's life, my food sufficient to feed five starving men. No one can afford to remain passive while competitors stake their claims. Nothing will be left to reward such self-restraint. Only death can purchase immunity from hostile claims to the power I seek to exercise”. For a similar argument, see THOMSON J., *Rights, Restitution, and Risk*, Harvard University Press, 1986, pp. 1–19.

<sup>7</sup> Such controversy may legitimately occur if the information is shared equally by the parties that are disputing. ACKERMAN, B., *We the People*, p. 148.

conflict and competition – we can deduce a first conclusion, that is that the focus of philosophy should be not on our rights, but on the challenges on these, which Ackerman thinks as a challenge on legitimacy. For Ackerman, rights are not the source that should be taken as a starting point in defense of our resources. The origin of political society, of freedom, of all our politically relevant behavior is conflict and, even once institutions are settled, the permanent reality of it on the background of our peace.

There are several moves that we can make when we are facing a dispute. The strategy at first sight less expensive is to suppress the protester. This is not a kind of social paradox or something just said to *épater les philosophes* nor it is a possible choice without any justification. Indeed, “This is no ordinary game; it may reveal that my deepest hopes for myself cannot be realized without denying the rights of others. If I succeed in suppressing the questioner, I may hope to live as if my power had never been challenged at all. It is a tempting prospect, which becomes more seductive as my effective power increases. Power corrupts: the more power I have, the more I can lose by trying to answer the question of legitimacy; the more power I have, the greater the chance that my effort at suppression will succeed—at least for the time that remains before I die.”<sup>8</sup>

Our societies are mixed systems that attempt to fulfill the questions of legitimacy – without, in various ways, suppressing the protesters. Intuitively, one of the reasons to avoid a general strategy of repression is that in the long term this would represent additional costs to the system such as to be practically untenable, unless we succeed in combining complex social systems, authoritarian political systems and economic efficiency. However, the important thing is that the repression of the question of legitimacy is mostly perceived as abnormal in all cases.<sup>9</sup> The liberal–

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<sup>8</sup> *SJLS*, p. 42, and p. 354, note: “Is it enough to be prepared to answer the question of legitimacy? Must we drop everything and actually engage in a conversation whenever anybody challenges any of our claims to power? It would be silly to spend our entire lives in a discussion of the single question of legitimacy—at the expense of all talk and action on behalf of our personal ideals. Nonetheless, I cannot be permitted to evade questioning to such an extent that others are uncertain whether they have the power to call me to account at mutually convenient times and places.”

<sup>9</sup> In ACKERMAN, B., *The Future of Liberal Revolution*, he distinguishes three types of revolution: religious, romantic, liberal. Only in the latter the demand for legitimacy is reversible, that is dialogical.

democratic societies are for Ackerman the attempt to satisfy as much as possible the questions of legitimacy. For this reason we have to figure out what would happen in a society in which questions of legitimacy, namely the requirement to justify inequalities, were always met. This society would be the accomplishment of the set of action that Ackerman think to be the essence of liberalism, namely the conversational interaction guided by the principle of neutrality.

2. Ackerman believes that it is not necessary to provide *ab initio* any analytical definition of justice, but it is sufficient to keep to its distributive function. Even in a situation in which resources were distributed in a perfectly equal way we could not exclude the possibility of conflict.<sup>10</sup> Actually, the possibility of conflicts could be excluded only with the fulfillment of these two conditions: a limited scarcity and actors that are identical from the psychological point of view. Clearly, this is a challenge for the imagination, since we should be able to imagine a world without marginal utility.

Some authors think that this definition of justice via distributive justice is simply misleading, since justice in the liberal–democratic States affects not only the problems of distribution, but i.e. also corrections of aggressive pressures, intimidations, harassments, physical violence that individuals or groups cause to others.<sup>11</sup> What I think it can be said against this position is that since distributive justice has the ambition to correct something that got wrong, the very problem of injustice is structurally related to it. It remains true that this issue, in Ackerman, is not central, but somehow derivative, because it can be recognized as such only when we have established an agreement on some conversational principles.

Here we meet an important feature that differentiates Ackerman both from Rawls both from other versions of contractualism, for example Gauthier's.<sup>12</sup> In Ackerman there is not a problem of original position or of the starting point of social negotiation. It does not matter at what point of

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<sup>10</sup> FLATHMAN R., *Egalitarian Blood and Skeptical Turnips*, "Ethics", 93, 1983, pp. 357– 366.

<sup>11</sup> LUCAS, J., *On Justice*, Clarendon Press, 1980; Lucas, J., *The Principles of Politics*, Oxford University Press, 1966.

<sup>12</sup> GAUTHIER D., *Morals by Agreement*, Oxford University Press, 1986.

the distribution curve someone makes a question of legitimacy. Ackerman seems to suggest the issue of the starting point in his metaphor of space travel and the discovery of a new world, but it is a didactic makeshift for making things clearer. It is, however, obvious that the model of rational conversation can be applied right away to our societies, our transactions, and our conversations.<sup>13</sup> All that is required is a set of cooperative strategies in conversation which can be analyzed and reproduced.

The first strategy is the adoption of the criterion of *rationality*. This strategy states that to the question of legitimacy we must not answer by suppressing the protester, but by providing reasons to justify our use of particular resources. It should be noticed that we are faced with a use of the term rationality that is very different from that adopted by the majority of philosophers and scholars in the human sciences. Usually the meaning of rationality comes from the definition used in the economic sciences, where it is intended as “A decision-making process that is based on making choices that result in the most optimal level of benefit or utility for the individual. Most conventional economic theories are created and used under the assumption that all individuals taking part in an action/activity are behaving rationally.”<sup>14</sup> Rational behavior considers the adoption of different maximization strategies according to purposes to be achieved – purposes that could be called hypothetical imperatives. Ackerman’s definition is instead very unusual. In its meaning there is a clear teleological direction and this is certainly not towards a strategy of maximizing expected utility. Rather, it is the adoption of a voluntary behavior that goes deep inside an area of uncertainty and risk.<sup>15</sup> In fact, being prepared to meet the question for legitimacy is not a guarantee that the dialogue will actually take place nor that it will go on.

But if the principle of rationality is not immediately comparable to a hypothetical prudential imperative, it would be a mistake to describe it as the dialogical display of the categorical imperative. In fact, the principle of rationality has and maintains an instrumental character. It is not, for

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<sup>13</sup> Problems of the ethical dimension of the conversation are discussed by HABERMAS, J., *Moralbewusstsein und kommunikatives Handeln*, Suhrkamp, 1983) and by CALOGERO, G., *Filosofia del dialogo*, Edizioni di Comunità, 1969<sup>2</sup>.

<sup>14</sup> <http://www.investopedia.com/terms/r/rational-behavior.asp>

<sup>15</sup> ZEPPI, S., *Il problema del dialogo nel pensiero italiano contemporaneo*, La Nuova Italia, 1960.

Ackerman, directed to gain, through its repeated application, a conception of the good which is universally valid; more modestly, it is thought as one of the means for enabling the settlement of social disputes in liberal societies. That means that principle of rationality has nothing to do with a definition of rational behavior, but it is better described as a prescription. In the case of rationality, as well as of the other rules, which we will examine shortly, the key point is that rationality, being conceived as prescriptive, has substantive contents, excluding certain behaviors. There are some reasons why rationality is intended this way by Ackerman. One of these is that the never-ending adjustment in the struggle for power, often referred to by Ackerman, has a ghost that hovers behind this struggle: the behavior of the *free riders*, using the conventional contingency of the rules and their instrumentality to selfish ends. The liberal citizen is the one that, on the contrary, *wants* the dialogic rationality together with the other rules. For an ackermanian liberal agent, indeed, the egoistic assumptions of a free rider cannot be consistent, in the sense that his/her problem is not to ensure the legitimacy of the property of the goods. Rationality is never chosen solely on consequentialist basis and, at the same time, it does not rely only to an internal ethical structure of the agent.

It must be stressed another important consideration of Ackerman's philosophy, namely that the principles of dialogue set aside one of the great myths of political philosophy: the state of nature. The dialogism just think we do not need it. According to Ackerman, "This comprehensive insistence on dialogue forces a break with one of the great myths of philosophy—the idea of a 'state of nature.' While the myth takes many forms, it always tells a story in which actors acquire 'rights' that are prior to, and independent of, their social interaction. How this trick takes place is a matter of some dispute—some say by a silent act of unchallenged appropriation, others merely stipulate the 'rights' their actors possess when they 'first' encounter one another in a social situation. The important point, though, is the myth's assertion that people have 'rights' even before they confront the harsh fact of the struggle for power."<sup>16</sup> There are no rights before the experience of

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<sup>16</sup> *SJLS*, cit., p. 43 and pp. 291–292 "Rather than attempting to arrange all social institutions in a way that will maximize his preferred set of values, the contract theorist typically concentrates on one or another narrow range of concrete 'rights' as if they were the decisive litmus for the legitimacy of the entire power ensemble. Of course, different theorists promote different concrete interests to the rank of



scarcity of goods. A word as ‘rights’ simply alludes to the possibility that disputes are settled without resorting to force, on the basis of a common reference to cultural models, and this is what happens in the practice of the liberal dialogue. But rights are not the foundation of liberal practices, since it is always possible that rights themselves are subject to the question of legitimacy. The question is whether this kind of move opens the possibility for an infinite regress. As a matter of fact, one could always question who questions his/her legitimacy. Ackerman believes that there is one way to cut off this possibility, that is the plain fact that agents taking part in the dialogue are equal in one respect, namely that they are equally worth. But this appears to be, rather, even in Ackerman, the disguised statement of a right which may still be subject to a new question of legitimacy. However, what is important for Ackerman is that there is any need to constrain liberalism neither to a natural law model, nor to a contractual model. Ackerman, in fact, identifies two flaws in contractualism. First, it describes dialogue as at most instrumental to the recognition of rights. “Since the principle of Rationality conceives this dialogue as the foundation of all claims of right, it requires a subtler, but no less decisive, break with a second familiar myth—the idea of ‘social contract.’ Although the parties to a social contract must speak to one another while negotiating its terms, this conversation is understood in instrumental terms only. It does not constitute the ground of the rights that emerge from the bargaining process but simply serves as a means to induce the parties to give their consent to the contract terms. Indeed, the most compelling versions of the contract myth try to cut

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fundamental rights. Nonetheless, once they have succeeded in “solving” the characterization problem in one way or another, all contractarians agree that the rights they have generated are of decisive significance. The result, from the utilitarians’ perspective, is a peculiar tunnel vision. On the one hand, even a trivial violation of one of the favored rights is cause for furrowed brow and anxious cry; on the other hand, a program involving the welfare of millions will fail to engage the contractarian’s attention, let alone concern, so long as it does not trench upon his precious rights. This narrow vision seems to belie the contractarian’s proud claim that he aims to vindicate the rights of all mankind; tunnel vision seems more characteristic of the vulgar ideologist intent upon the vindication of his class interest above all else. This is not to say that the utilitarian cannot find a useful place for rights talk; as we have seen, he may well endorse a bill of rights that contains “absolute” protections for interests that would otherwise be slighted in majoritarian politics. He objects only when rights talk is made an end in itself, unrelated to a more comprehensive method of social analysis.”

through the chatter of precontractual negotiation by designing a bargaining situation in which no rational actor has any sensible choice but to sign on the dotted line. Protracted discussion about contract terms at the founding convention is often positively harmful—it can reveal strategic possibilities for bluffing and coalition formation that may make the terms of the contract indeterminate. And it is only each party’s promise to abide by the contract that constitutes the basis of his social rights and duties—not the talk that precedes or follows the magic moment of promising.”<sup>17</sup> Second, contractualism grants an irrational privilege to the mythical moment of promise. This second element contrasts with an elementary principle of economy. We, in fact, do not need to go beyond the current practices of social dialogue, in which there are all needed justifications for our concrete requests.

3. Dialogue is not a mere eristic dispute which purpose is to overthrow the positions of the opponent to achieve verbal victory. The aim of dialogue is truth. Focusing on this purpose, one could say that Ackerman’s dialogue is akin to judicial cross examination.<sup>18</sup> For this reason it is therefore necessary

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<sup>17</sup> *SJLS*, p. 14 and p. 281: “Yet this is no simple task, for the fact is that I am not some apolitical being but a resident of an organized society from the moment of my birth. Nor am I merely physically dependent upon others for my continued survival; I am culturally dependent upon them for the very materials I have used in constructing a notion of myself and my ends in life. I simply could never have started my effort at self-definition without an encounter with the models of behavior and the languages made available by my contemporaries and predecessors. This is not to say that there is no sense in thinking of myself as a distinct person with a distinctive personality and objectives; it is rather to say that whatever individuality I possess has not been gained independently of society but rather as a result of an interaction with society. Now, if this is so, then the contractarian is really making an extraordinary demand when he asks us to think of ourselves as potential entrants. For this cannot be accomplished by undressing ourselves in the mind’s eye and observing what we are wearing underneath. Whatever we find is no less a product of our encounter with organized society than that which we discard. Of course, the suppressed material may be very different from the surface, but I know of no interpretation of its meaning that would entirely ignore its relationship to the social processes through which we define our individuality.”

<sup>18</sup> ACKERMAN, B., *Reconstructing American Law*, cit., pp. 93–98.

that the dialogue has a certain structure, namely that it is a discourse bound to certain conditions. For Ackerman the only alternatives to the individuation of a dialogic structure are either the production of a background noise or an incomprehensible and ominous silence. Clearly, many of the limitations that are found in our conversations are conventional, but most of these requirements are not demanding. Except in very special circumstances, if I make an order at the restaurant I do not expect to start an exchange of philosophical opinions. If this happens, the dialogue is perceived as abnormal. Ackerman goes further and believes that it is possible to constrain the discourse on power to rules that are not social conventions, since thinking on rules as befitting conventional rules cannot avoid circularity.<sup>19</sup> “Even the most egregious boor recognizes that a conversation with the telephone operator is not a suitable vehicle for a blow-by-blow account of his life. It is this familiar sense of conversational constraint<sup>6</sup> that I mean to put to a new use. Just as there are constraints imposed in other conversations, I also want to constrain the dialogues in which people talk to one another about their claims to power. Not that I wish to constrain power talk by appealing to social etiquette. Notions of conventional propriety presuppose the legitimacy of the power structure, rather than vice versa. The question, instead, is whether fundamental philosophical arguments can be advanced to justify one or another constraint on power talk”<sup>20</sup>. So Ackerman proposes two further conditions, in addition to rationality, which should not be compromised with the conventionality .

The first additional requirement required to rationality is *consistency*. Consistency requires that the subject adopts reasons to justify his/her power which are not inconsistent with his/her other reasons that he/she will provide to make any request of power. About this condition (“The reason advanced by a power wielder on one occasion must not be inconsistent with the reasons he advances to justify his other claims to power.”<sup>21</sup>), it should be noted that it does not specify the time lapse during which this condition should be effective. It does not seem, in other words, be irrational that the subject *A* at time *t1* justify his/her use of a certain good with a certain group of reasons

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<sup>19</sup> LEWIS, D., *Convention: A Philosophical Study*, Harvard University Press, 1969.

<sup>20</sup> *SJLS*, p. 16; see *Neutralities*, cit., p. 29, where it is clearly said that neutrality is a value that must be understood in relation to other values.

<sup>21</sup> *SJLS*, p. 15.

*p1*, and that at the time *t2*, to justify the claim on another good, his/her can propose a series of reasons *p2*, that are not consistent, in whole or in part, with *p1*. *A* could justify his/her new position, not hypocritically, by saying that in the meantime he/she has changed his/her mind. For Ackerman, at this point he/she will have to abandon one of the two groups of sentences, if he/she wants that his/her behaviors over time can be seen as having some consistency. But it is not necessary that this happens, and it is not clear *why* it should happen. To apply requirement of consistency to agents, one must also require a commitment to a strong solution of *personal identity*. The person who is called to satisfy a requirement of strong consistency, i.e. consistency over time, should not consider himself/herself an *ens successivum*. This could mean that conversational coherence implies some metaphysical conditions relating to personal identity, that is to the idea of a subject that remains relatively stable, for making the performance of a dialogue sufficiently stable.<sup>22</sup> Ackerman's rules of conversational constraints are thought not only as justifications required for individuals, but also as constraints on the justifications required for political groups. If we strictly apply the requirement of consistency, we can figure out that probably a few political parties could satisfy it, with the exception of parties with a clear prescriptive teleological ideology.<sup>23</sup> Usually, however, parties of this kind are prone to fanaticism and therefore it is difficult to think that they can participate in the liberal dialogue as it is thought by Ackerman. The principle of consistency, therefore, has a definite metaphysical characterization – in my opinion more metaphysical than that of the principle of rationality – expressed by its commitment to identity over time.

A moral–ethical characterization of liberal dialogue is clear also in the other conversational principle that is required to register citizens as participants to liberal society, namely *neutrality*. This principle asserts the invalidity of any justification in which one makes use of *ad hominem* arguments (“Neutrality. No reason is a good reason if it requires the power holder to assert: (a) that his conception of the good is better than that

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<sup>22</sup> CHISOLM, R., *Person and Object*, Open Court, 1979 pp. 89– 113.

<sup>23</sup> We must not ignore the fact that the distinction between tactics and strategy is controversial. Sometime it is simply required to pass the test of consistency through time, while, at the same time, preserving the substantial freedom of violating it when it can be more convenient. SCHELLING, T., *The Strategy of Conflict*, Harvard University Press, 1990.

asserted by any of his fellow citizens, or (b) that, regardless of his conception of the good, he is intrinsically superior to one or more of his fellow citizens.”<sup>24</sup>). This means that it is not allowed saying that his/her conception of the good is better than others to justify his/her claim to power or that, apart from his/her own conception of the good, he/she is inherently superior to other citizens. Neutrality is much more than a frigid description of liberal mind. For Ackerman, in fact, the skeptical strategy, probably the first that comes to mind in defending this conversational principle, is not the only or even possibly the main one. The skeptic argues that since views on how to pursue good life are divergent, it follows that no substantive conception of the good is better and worthier than any other and, therefore, it is better to choose some procedural neutrality, on which at least we can all agree about. However, for Ackerman the road to be taken is another. There are some substantial arguments that work just as well as skeptical argument in justifying neutral conversational principle. The first refers to the concept of Mill’s experiments in living and to its antiauthoritarian contents,<sup>25</sup> the

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<sup>24</sup> *SJLS*, p. 18.

<sup>25</sup> MILL, J.S., *On Liberty and Other Writings*, Cambridge University press, 2014 and BERLIN, I., *Four Essays on Liberty*, Oxford University Press, where the concept is examined on several occasions. On Mill, see *SJLS*, pp. 158–159: “This freedom from censorship is but an aspect of an even broader right to free competition. Not only may I learn of competing offers but I may accept one of them without your imposing some special sanction upon me. While you have the right to refuse to deal with me, you may not go beyond this and take affirmative action to block my favored relationship. Thanks to our wonderful rawn with preternatural clarity. Quite simply, you are guilty of the charge of monopolization if you make any effort to sabotage my shield so that you can impose a special sanction on me for dealing with one of your competitors. This clean definition of monopolization, finally, permits us to fulfil Mill’s promise by locating an important category of self-regarding actions that are, in principle, immune from State suppression. The traditional solution has been cast in terms of an action’s harmfulness: if it causes harm to others, then the government may properly control it; if not, not. Unfortunately, this test threatens Mill’s principle with trivality: it is hardly possible that the government will regulate conduct unless somebody complains about it; and people will never complain unless they conceive themselves harmed in one way or another. Consequently, a great deal of energy has been devoted to defining the sorts of harms that fail to qualify as really harmful. The favorite effort has been to deny that “merely” psychological harms are harmful. Yet this venture generates familiar difficulties. Not only is it hard to distinguish the “merely” harmful from the “really” harmful, but one wants to know why psychological

second refers to a peculiar interpretation of the concept of autonomy and self-deliberation, according to which means that are chosen to pursue life plans are not indifferent to the value of these plans; the third is as follows: even if you think you know what good is and that imposing it to the others will result in a general welfare, you cannot be sure that people, who are responsible for the imposition of the good, have a special moral endowment as to be incorruptible. As this last argument crosses the paths of neutrality is not clear, however, because it entails many and unexplained anthropological assumption, and, in any case, it is a path that Ackerman leaves largely undetermined. As happens for the other two principles, neutrality may seem defended both by substantive arguments and even by skeptical arguments, but it derives its strength from a structural idea of what a theory of justice should be.

4. Ackerman's theory, in fact, holds together three elements which are strictly tied up.<sup>26</sup> The first is the reference to interpersonal comparisons and intrapersonal comparisons between different possible states along the time span in the mechanisms of distribution. Equality refers to a mechanism like that, and the same consideration also applies to other principles like utilitarianism, maximin strategies, and so on. To apply a structural principle you need to know two things: a) how a set of possible outcomes should be preferred; b) what should be considered as a real gain for individuals. Ackerman, like Rawls, provides a structural theory in this sense. The difference is that Rawls explains that the gain is obtained in terms of primary social goods. For Ackerman, the equivalent of primary social goods is what is gained from social bargaining through liberal dialogue, that is possible to translate into monetary income, health, education, adherence to a certain structure of freedom and political obligations. To understand how these assets should be distributed, Rawls uses the notion of maximin and the

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affront is necessarily less serious than other kinds of hurt. The answer is generally nothing better than an impassioned plea about the need to draw a clear line "somewhere" if individual liberty is to be assured.", where Ackerman try to give an interpretation of the non- utilitarian non- interference principle of the State in individual choices based on the principle of the greater amount of information available to citizens.

<sup>26</sup> See FISHKIN, J., *Can There Be a Neutral Theory of Justice?*, "Ethics", 93, 1982, pp. 349-356.

idea of lexical order of the principles of justice. What in Rawls's theory is called 'veil of ignorance', in Ackerman is a generic appeal to undominated equality, that includes an approximately equal basis of material goods and an indifference to the genetic composition of individuals – provided that, in one way or another, they can participate to the dialogical exchange.<sup>27</sup>

The second central feature shared by both Rawls and Ackerman is an anti-intuitionistic attitude shared by both. This attitude is played towards the traditional problem of distributive justice in Rawls; in Ackerman is the structure itself of dialogue that is intended to set aside intuition. In Rawls, since the starting point is reached through a process of deprivation of information, the distributive outcomes are continually subject to a kind of transcendental verification; in Ackerman, there is no claim of transcendental verification and uniformity in outcomes is merely contingent. What is important is neutrality and, simply, dialogism seems to be one of the main instruments to affirm the priority of neutrality. If someone will be able to find out more efficient strategies, then we will have reached a further stage of liberal theory. It seems clear that dialogic principles have been introduced in a reverse order of importance and generality. Then, it seems clear the main objective of Ackerman: once neutrality has been introduced will be possible only certain outcomes compatible with the practice of dialogue and not others.<sup>28</sup>

Neutrality, thus, as conceived by Ackerman is devoid of substantive contents? The interpretation of the principle of neutrality that is more easily defensible is what I will call *strict*. This interpretation is not compatible with any claim of approximately uniqueness of the outcomes flowing from the principles of justice. As far as is compatible with the ideal of undominated equality, however, it does not allow to give a roughly uniform content even to this principle. It is true that the idea of neutrality is conceptually compatible, no doubt to a high degree, with the idea of equality, but as long as it does not give any content to the latter. There is, moreover, a version of neutrality which Ackerman does a fairly extensive use of. This version

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<sup>27</sup> *SJLS*, cit., pp. 122–126.

<sup>28</sup> Thus, for example, the racist speech of the Nazi is not so much logically refuted, since reduced to absurdity by showing that the Nazis must in some part to accept one of conversational constraints, and, accepting one, or a part thereof, must also accept all others, otherwise his/her speech is likely to be foolish or incoherent or meaningless. Of course, Ackerman does not claim that this argument has some value for the Nazis. See *SJLS*, pp. 129–132.

simply states that if each person is as good as any other, each person should have at least as any other has. A less strict interpretation of neutrality would be forced to promote a certain distribution of what performs the function of primary goods. But which interpretation of neutrality should be privileged? Neutrality taken as structural criteria of a certain distribution of private property, or neutrality as an equal initial distribution of opportunities, or even neutrality as an ideal mean of correction in the distribution of goods? We can choose to weaken neutrality, as it were, and favor a *large* interpretation. However, when we weak neutrality we make it for some goal, and this is equivalent to introduce hide principles, so it will be always doubtful that the outcomes derived from a weakened neutrality are derived by a single principle.

Ackerman is induced to adopt a strict interpretation – which, in my opinion, is the only logically plausible – of neutrality, when he adopts anti-perfectionist and anti-utilitarian positions. Let us assume that two people are disputing on portion of wealth and that an equal arithmetical distribution is not considered fair. Let us assume that one person wants to use it to devote himself/herself to climbing, while the other would like to concentrate on theoretical contemplation. In accordance with the principle of neutrality, it is not possible to justify the claim of the first party about an inherent superiority of climbing. Appealing to a greater utility of climbing meets all the difficulties of interpersonal comparisons.<sup>29</sup> But let us assume that the first person has a perfect technology of justice, and that he/she is not just satisfied to assert greater utility of his/her end, but that he/she wants to applies to his/her choice a benthamian hedonistic calculus. He programs a computational machine with an appropriate algorithm for comparing two rival activities, and at the end of the process climbing is actually the activity that produces the greatest utility. But does this prove something? The very idea of calculus in social situations assumes some values that could be in conflict with at least some of ideals that are considered as a priority by other citizens. “To put the point more broadly still, the problem with utilitarianism is its teleological character, its effort to evaluate distribution rules by how much ‘good’ they produce. Any such effort requires a specification of the good that will be contested by some citizens who insist on measuring their good by a different yardstick, one that gives them more manna than their competitors. Once the issue is framed in

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<sup>29</sup> ARROW, K., *Social Choice and Individual Values*, Yale University Press, 1953.



this way, there seems to be no reasoned resolution of the conflict within the limits of discourse established by Neutrality.”<sup>30</sup>

But probably the concept of neutrality that Ackerman would like to use is so strict that it turns against, for a kind of heterogenesis of ends, to the same meter which is adopted to resolve disputes over distribution. In fact, if *A* is worth at least as much as *B*, this would seem to imply that *A* is entitled to an amount of manna at least equal to that of any other contenders in the distribution process. But what assures us that the yardstick used to determine what ‘at least’, ‘worth’ ‘as much as’ mean are equal for all social agents? Even in the abstraction sketched by Ackerman, there is no guarantee that an equal distribution of goods cannot made notable differences in the satisfaction of the competing conceptions of the good of agents. If we have to be suspicious of any specification of the content of equality, then why not be suspicious even toward that particular specification that relies on the quantitative determination of the asset of the good to be distributed? Maybe we can choose an alternative path. If we agree to enforce the prohibition of screening particular conceptions of the good as superior to others, we may rely on the principle of allowing a different distribution as long as it allows an equal satisfaction of the goals through which actors see their lives as meaningful. In a pattern like this, it would not be formally violated any conditions required by Ackerman. But how to figure out that agents committed to different conceptions of life would agree on a general meaning of ‘different distributions for an equal satisfaction’? The possibility to allocate resources on a quantitative basis is bound to an prejudice never discussed by Ackerman. Only in case that the quantitative criterion is taken from the beginning like the one that is the most appropriate for deciding any gains of the people, then it would be possible to decide which different distribution amounts of goods could produce equal amounts of utility.

However, it is difficult to understand how it is possible to introduce any quantitative algorithm that takes into account the different satisfaction or

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<sup>30</sup> *SJLS*, cit., p. 96. The problem is even more clearly in the case of intergenerational justice. See pp. 197: “The same cannot be said of the utilitarian’s approach to trusteeship: the measure of intergenerational justice no longer depends on one or another question— begging manipulation of the original position; instead, it rests on a calculation that is clear in principle if fuzzy in practice. The only trouble is that the utilitarian’s answers are clearly illiberal.”

well-being related to the allocation of different amounts of goods. In fact, this algorithm would have to describe precise correlations between different psychological states associated with agents. To do this, we should say that satisfaction is not influenced by any vision of good, which is the true criterion of ordering preference of the subject, and this is highly implausible. The concept of marginal utility, for example, calls to mind precisely this series of psychological mechanisms. But neutrality, in fact, forbids us to compare different conceptions of good.<sup>31</sup> So the idea of an algorithm in distribution seems to be fatal to neutrality in any case.<sup>32</sup>

5. An example of these difficulties comes from the problem of natural and genetic allocations, that is the gene pool with which the actors appear on the theater of social bargaining. The positions Ackerman has in mind can be grouped into two major groups: the utilitarian position and that contractualistic one. Problems of genetic allocations seem to find an easy solution from an utilitarian point of view. Indeed, "After all, no problem is too big for the greatest happiness principle. When provided a perfect technology of justice, the clear-thinking utilitarian would be utterly opposed to the liberal use of a lottery to select a genetic distribution out of an almost infinite set of undominated options. Instead, he will take advantage of the Geneticist's information to arrange genes in a way, X, that maximizes overall utility. Now, of course, in choosing his favored X, the utilitarian will confront familiar problems in defining happiness more precisely and explaining how it may be summed to an overall societal total."<sup>33</sup> Utilitarianism does not ensure, therefore, that its solutions will be illiberal, because there is no assurance that cases of genetic dominance will be avoided; instead, these cases are rejected by a natural lottery that in Ackerman's opinion is the most favorable conditions for dialogue. So, "Thus, the utilitarian's willingness to manipulate genes for the sake of happiness presupposes the legitimacy of a political effort to define the good. In contrast, the liberal's insistence on a lottery among undominated options

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<sup>31</sup> GROVER, R., *The Ranking Assumption*, "Theory and Decision", 1974, pp. 277–299.

<sup>32</sup> Further considerations on this issue can be found in JEFFREY, R., *On Interpersonal Utility Theory*, "The Journal of Philosophy", 1971, pp. 647–656.

<sup>33</sup> *SJLS*, p. 120.

follows from his effort to organize power relations in a way that permits each citizen to participate in a Neutral dialogue. My aim here, as elsewhere, is to suggest that this difference in basic theoretical structure is of more than theoretical interest; it generates strikingly different results in every fundamental area of the power struggle.”<sup>34</sup> Clearly, an utilitarian who happens to be also liberal can successfully mitigate the consequences of the dominance of certain illiberal natural endowments. However, a strategy of this kind would be always a second choice and would not be dominant in the hedonistic calculus.

The resources of contractualism to address the problem are unconvincing, too. The picture that Rawls outlines on the information of the parties involved in the original position makes totally unrealistic not only the problem of choosing one’s own body, but the problem of the choice of almost every preference. “Such a creature is so removed from our common experience that the nature of his preferences remains altogether mysterious. If, however, the theorist tries to make the preferences of his hypothetical contractor more intelligible by endowing him with a physical body, then it becomes difficult to speak of the contractor as choosing one genetic distribution over another. Instead of choosing a distribution, the contractor has instead *been given* a body by the theorist so as to make *his choices on other subjects* intelligible to us.”<sup>35</sup> Genetic endowments are part of a natural lottery that cannot aspire to any moral justification for Rawls. Unable to embrace eugenics programs, Rawls prefers to offer compensatory advantages in educational programs and in tax reductions. But perhaps Rawls gets by too cheaply. Remember that the formulation of the principle of difference concerns the distribution of social opportunities, and these refer to the distribution of primary goods “Now genes obviously have to do with several of Rawls’s social values: opportunity, income, wealth, and self-respect. And if Rawls’s principle is given a simplistic interpretation, it can authorize genetic manipulation that would destroy much or all of the genetic diversity legitimated in a liberal State. ‘Opportunity’ is particularly troublesome. While it is not impossible to arrange things so that different genotypes

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

<sup>35</sup> *SJLS*, p. 121.

receive equal income or wealth, there is an obvious sense in which people with different genes do not have equal opportunities.”<sup>36</sup>

Dialogism would be in a better position to tackle the problem, because it is sufficient to assume that there is some activity that is relevant to some conception of the good in which someone has an advantage. “So long as there is some conception of the good at which you are comparatively advantaged, you cannot verbalize your sense of grievance in a way that survives the conversational constraint imposed by Neutrality.”<sup>37</sup> If you look at the genetic distribution with attention, the conclusions we must reach are, for Ackerman, simple conclusions of common sense. Some individuals are gifted in a certain area, others in another area. If I have the opportunity to select whether to be Usain Bolt or Paco De Lucia and I choose for the second opportunity, I cannot complain if Usain Bolt runs faster than me and he cannot claim as unfair that he is not a virtuoso in playing guitar. My inferiority in certain sectors are offset by my greater ability in others. There are areas where I have a certain degree of genetic dominance, others in which I suffer, but the important thing is that I have no hope to convince my interlocutors that I am ever in a disadvantaged position on the basis of dialogic principles.

In the discussion of the genetic allocations Ackerman makes a slight, but significant shifting in his conception of neutrality. There is no longer any pretense to avoid an internal reference by agents to their own conceptions of the good, but it is granted that all distributions of genetic endowment, which do not pass the test of neutrality, should be excluded. Others genetic distributions are permitted because of the belief that they will not give rise to undominated diversity. However, there is a really important issue to think about: there is a strong contrast between the initial distribution of goods – manna – that seem must be equal and the distribution of natural endowments, that seems to be casual and, therefore, unequal.

It may be objected that the first distribution is conventional and/or derived from the principles of neutrality, and the other (gene pool) is natural and does not depend on our arrangements. This is true, but it is contingent upon us which weights should have at least some distribution of genetic effects. So, the question seems to be, once again, the interpretation of the

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<sup>36</sup> *SJLS*, p. 122. The search for individual well-being is approached by Ackerman like akin to property rights. ACKERMAN, B., *We the People*, p. 25.

<sup>37</sup> *SJLS*, p. 118.

consequences. The weight that we are willing to attribute to some genetic resources are clearly dependent on different conceptions of good. It is, therefore, difficult to argue that same conversational strategies are effective in both cases, explaining relevant differences with, in the case of the manna, scarcity and a limited amount of solutions, and, in the case of genes, with its abundance. It is not clear how the insistence on an equal initial distribution of resources should be defended on the neutralist basis and an unequal distribution of genetic resources can be defended on the very same basis. In this last case, in fact, Ackerman evaluates as eligible only those gains that everyone should deem reasonable on the basis of his/her own conception of good, but when he faces the problem of distributing material resources he makes use of an external criterion that considers worse any distribution that is quantitatively lower than that of any other agent. That means that Ackerman allows the reference to the personal conception of good in the first case, but not in the second. How do you know that an egalitarian distribution equally promotes all different conceptions of good which are compatible with liberal dialogue?<sup>38</sup> At first glance, it would seem that the problem of determining whether the procedures of the distribution of resources to an agent is simple. He must not receive a lower asset of resources than other agents. In the case of the distribution of material external resources the answer might, after all, still be easy, but in the case of the genetic endowment the test to be applied is clearly another, or because it refers to an anthropological concept of ‘normal human being’ or because it refers to a peculiar vision of good or because, more probably, it keeps together both. For Ackerman it is necessary to reach that point of distribution that allows to all citizens an equal contribution to liberal dialogue. Ackerman thinks that this point, however, is not bound on any particular distribution of goods, even if we do not call it as undefined and blurred. It certainly excludes some outcome, but it allows many more.

The issue of neutrality, as a problem of distributing opportunities, gets us some important suggestions from the discussion that dedicates Ackerman to pedagogical issues.<sup>39</sup> Even in the case of education of children it must be

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<sup>38</sup> LUCAS, J., *Against Equality*, “Philosophy”, 1965, pp. 296-307.

<sup>39</sup> See also COHEN, E.-D., *Paternalism that does not Restrict Individuality: Criteria and Applications*, “Social Theory and Practice”, 1986, pp. 309-335; LUNA, F., *Paternalism and the Argument from Illiteracy*, “Bioethics”, 1995, pp. 283-290.

fulfilled the conditions imposed by the conversational constraints. What could make the issue complicated is the fact that here we have to do with people who are not yet citizens, at least for one important point: they cannot always advance the question of legitimacy. One of the tasks of a liberal society is to make effective the background conditions that can best facilitate the entry of future citizens as full participants in the liberal dialogue. This must happen without falling into paternalism, which is a violation of neutrality.

If here we are facing a problem of distribution of resources, we should ask what kind of resource is education? In a liberal society education distributes equal opportunities, avoiding as much as possible that someone imposes on those who are approaching to the educational process his/her own vision of the good. This is the reason why liberal society cannot consistently encourage private and/or confessional education. Children are not, in fact, owned by anyone and there is no right, for those who exercise authority over them, to choose the education that is more coherent with their own vision of good. “Parents are not permitted to view childish resistance as a kind of weed that destroys the beauty of their private garden; they must increasingly recognize the right of others to provide the child with cultural materials with which she may forge the beginnings of an identity that deviates from parental norms. [...] until the day comes when she has gained sufficient control over her aggressions and sufficient experience with the larger world to claim the right to define and pursue her own conception of the good, like every other full citizen of a liberal State.”<sup>40</sup>

However, can we say that this happens without any reference to some vision of the good? When liberal societies distribute opportunities of this kind, these opportunities are neutral chances offered to future citizens to realize any vision of the good? It would seem that things are going well when not paternalistic education is stressed,<sup>41</sup> but the insistence on the conditions of possibility of the construction of equal opportunities implies a clear option for certain values, for example, those values that make us fully citizens, being able to develop our own conception of the good. It is not necessarily

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<sup>40</sup> *SJLS*, p. 137.

<sup>41</sup> An original perspective on paternalism is offered by F. Hubbard, *Justice, Limits to Growth and an Equilibrium State*, “Philosophy and Public Affairs”, 1978, pp. 326–345.

that every agent must design his/her own vision of the good potentially in conflict with that of any other. The ability required for self-deliberation can just as be effectively deployed in joining to a received conception of the good. As a matter of fact, this is what frequently happens, certainly also for reasons of social equilibrium. When in pedagogical issues liberal society gives priority to all those values that improve autonomy, is this process really independent from stating that autonomy is a better value? If we say that achieving autonomy is great gain for people, this gain is really a gain just for who that already believe that autonomy and self-deliberation are values to pursue for other citizens.

What reasons are there for a religious person or simply for anyone who does not adhere to an ethic of autonomy to implement decision-making autonomy and self-deliberation in a liberal society and to encourage them in their children? Only a complete lack of understanding of the implications of these concepts for *their own* conceptions of good. Of course, I do not want to say that autonomy is not, from a liberal point of view, a good highly desirable thing and the more morally significant feature in a liberal ethics. My idea is that binding it to neutrality does not mean that it instantly becomes more attractive, precisely because procedural neutrality cannot constrain moral principles remaining impartial.

6. Arguments in favor of certain principles presuppose, thus, a preponderant place assigned by Ackerman to neutrality in any ranking of values. In order to refute utilitarianism Ackerman is forced to adopt a rigid conception of neutrality in distributive justice. However, the rigid conception of neutrality adopted against utilitarianism presupposes what has always been the greatest obstacle to this conception of morality, namely the possibility of making interpersonal comparisons.<sup>42</sup> Utility is a such a complex index, variable from individual to individual, that many have felt that we are here faced with a *de facto* impossibility. The same problem, however, also applies to Ackerman's conception of neutrality. The fact that it is true that I am worth at least as much as you are and that it is true that I am entitled to at least the same amount of resources as you are entails that what I have is worth at least as much as what you have. This implies that it is possible to

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<sup>42</sup> CARLSON, G., *Plans, Expectations, and Act-Utilitarian Distrust*, "Philosophical Studies", 1979, pp. 295–300.

perform a comparison of different values on a neutral basis. Unless, however, that we do embrace a shared ethical commitment on neutrality this is not possible. Embracing, therefore, a structural theory of justice is hardly compatible with a strict conception of neutrality, since the distributive outcomes that are allowed by this are completely undefined. Ackerman therefore surreptitiously introduces a less rigid and more elastic conception of neutrality.

What in Ackerman performs the function of Rawls's primary goods are those conditions that allow the full participation to the dialogic environment. Doing this, however, means to introduce a kind of measurement, which allows us to treat citizens viewing their perspective placement of their intention, as they are shown in the practice of dialogue, inside liberal society. Only if there is this teleological attitude, it does make sense to treat people equally. This priority is lexically antecedent to distribution. For example, State could provide all citizens with an equal salary. From one point of view who would deny that it is a choice of equality? But very few, I suppose, would feel satisfied. The reason is that the equality, in a neutralist perspective, it is more a matter of procedure than a matter of substantive considerations. Since we are not equal with respect to our ability, and we know that different capacities receive different appreciation in different circumstances, then in liberal societies we call for another kind of equality, that is the procedural one.

Ackerman implicitly believes that we should put a content into neutrality, through an initial provision of units of goods, in order to correct some inequalities in our society,<sup>43</sup> but when he specifies what these assets are, he also opens the path to a very strong objection: why taking into account certain specific goods rather than others? Why emphasizing on certain distribution rather than on another? Ackerman's dialogism pretends to mark a distance from Rawls's contractualism, because it is deemed incapable of foundational power, but it really meets a similar difficulty. In the original position the choice of principles is operated without reference to particular conceptions of the good, which are considered only when that choice has already been made. Rawls believes, however, that it is necessary to allow a weak conception (thin theory) of the asset that can provide a guide to the parties under the veil of ignorance. This is the ability to see one's own life as

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<sup>43</sup> For comparison with the ideology of the New Deal, cfr. *Reconstructing American Law*, pp. 72.



meaningful, pursuing and consciously choosing the most appropriate means to fulfill this meaning, that is a moral end. This weakening of the theory of the good, however, leaves undetermined what this meaning is, that is an index of primary goods that should change, according to the chancing of that meaning. To overcome this difficulty, Rawls has been forced to introduce a conception of the moral person as widespread in a well-ordered society, thus assuming and not founding the teleological ordering of society.<sup>44</sup> Similarly, the performance of Ackerman's dialogue tells us nothing about methods of distribution.<sup>45</sup> If neutrality is understood in the strict sense, then there is no compatibility with any structural principles of distributive justice; if it is understood in the weak sense, on the contrary, there will be possible to determine a single distribution structure and a unique arrangement of principles of justice only violating some conceptions of good.

Stressing on neutrality is not only part of the rhetoric of Ackerman, but belongs to the whole liberal tradition. What are the assumptions that in this tradition can be precisely relate with neutrality? Some of these are not necessarily bound to a liberal interpretation. There is, in fact, first of all, the plain observation of the human beings as essentially oriented towards the achievement of goals. But these purposes and the assets that are derived from them are not unique, but plural and potentially conflicting. In order to achieve their goals is always needed acquiring some goods. However, these goods are usually subject to scarcity. It follows that social conflict cannot be completely eliminated, nor – with typical passage from is to ought – it should be. The problem is rather to contain it and reduce it to an acceptable size. The task of liberal politics is to design an order that allows the pursuit of different ends for individuals within a structure of regulated and not destructive conflict. Political philosophy is the search for those structures that best promote these goals.

Since much of the political activity is aimed at the realization of cooperative goals tied to specific conceptions of the good, so that it is easier for everyone to realize their goals, in Ackerman's vision each must also renounces to the claims of superiority of his/her own vision of the good on the others. For this reason, the purpose of the State is to preserve the

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<sup>44</sup> RAWLS, J., *Political Liberalism*, Columbia University Press, 2005.

<sup>45</sup> ACKERMAN, B., *On Getting What We Don't Deserve*, that specifically deals with the problems of acquisition and is the first version of Ackerman's dialogism.

conversational constraints and apply them wherever possible. This is a kind of ideal situation, but it is also possible to conceive what would be a society where the dialogic constraints were predominant. It would exclude disputes on moral ends and what would count would be only underwrite the rules that maintain order and avoid conflicts, rules different from any substantial purposes of the agents. Keeping alive the dialogue seems to become itself the end of moral and political order.

It is somehow strange that this outcome, designed as neutral, is reached through a conception of voluntary cooperation based on anthropological features.<sup>46</sup> According to this conception, individuals are endowed with a structure that governs their preferences. It is assumed that every individual is a fusion of limited selfishness and limited altruism and, moreover, it is believed that this description is not subject to historical change. The preferences of the subject would not be actually exogenous or at least we must treat them as much as possible as if they were endogenous. It is not, that is, supposed by Ackerman that the activities of the State may determine a change in the preferences of the individual – that, after all, clearly would violate the principle of neutrality.<sup>47</sup>

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<sup>46</sup> This means that there is something else beyond maintaining the swing of dialogue. *SJLS*, p. 322: “I can use neither force nor reason to impose dialogue upon you. All I can do is ask my question and await your reply. If you try to stare me down and impose brute force upon me, I will act in self– defense. If, instead, you answer my questions, I will answer yours, and we will see what we will see. The choice is yours. [...] In reflecting on your choice, recall only this: I do not wish, by some conversational trick, to induce you to grovel before me in the dust. Liberal conversation is not my technique for gaining mastery over you, but a means by which we may both achieve a deeper affirmation of ourselves as individuals entitled to mutual respect. [...]. Prepared to defend his claim to a limited share of social power, each citizen may turn his attention to the fundamental question that none can evade: the meaning of his own life. And within a power structure based on dialogue, each person may, to the extent he finds it useful, call upon others to engage with him in a common search for meaning. The overall pattern of culture and life that emerges from this interchange will constantly change over time, as one generation builds upon, and criticizes, the work of the last. Over time, however, the social life of the liberal State will represent the full range of moral creation that lies within the grasp of citizens who confront one another without pretensions to moral dominion.”

<sup>47</sup> TAYLOR, M., *The Possibility of Cooperation*, Cambridge University Press, 1987, pp. 164–185, however, has argued that if the structure of social preference cannot

For Ackerman skeptical considerations on nature of substantial ends, which are related to the epistemological considerations on the neutrality made by Ackerman, are correlated with an activist liberal State. Ackerman believes that there is a direct link between the arguments in support of neutrality and conclusions – on the protection of freedom of speech and expression, on environmental policy, on the distribution of wealth between generations, and so on – generally accepted in liberal communities. The answers we find to these questions, however, are not internal to our community for some contingent reason – in the sense that they could be left to the free judgment of individuals and to the preferences of social groups. For Ackerman they stem from assumptions about neutrality. If they cannot be traced back to neutrality, then that means that someone is trying to exercise illegitimate power over someone else. This course of action should justify a reallocation of resources in an egalitarian sense. But there is a hidden assumption in Ackerman, namely that in any situation of ethical choice it should be taken a position in favor of a broad moral relativism. However, choosing relativism is not a choice implying itself relativism, as choosing neutrality does imply a no-neutral commitment to neutrality. But Ackerman still believes that neutralism does not endorse any moral judgment of priorities. Ackerman line of argument could be that things are precisely so: any claim of superiority should be based on a privileged access to the truth of the ethical-moral judgments, while in reality they are not susceptible of proof. Other interpretations of the principle of neutrality that lead to nihilistic consequences are inhibited. These are also excluded, for example, by the Hare's rule-utilitarian Kantianism, according to which all candidates for the role of moral principle must be universalizable in the sense that they should not contain any reference to particular people and/or situations. There is, indeed, more than an analogy between these two species of universalism. Few moral philosophers would find it difficult to follow Ackerman in rejecting egoism, but he associates this move with the rejection of any policy, even those formally universalizable, which he thinks are designed to affirm some statement of superiority.

It would seem, therefore, that the principle of neutrality is reduced to the assertion that, since there is nothing that resembles to a kind of moral knowledge or moral certainty, we are never justified to prefer a certain

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be changed in the absence of the State, it does not follow that the State is desirable even when the individual is not able to formulate the corresponding preference.

distribution of manna on the basis of a judgment of superiority of any person, action, good, or way of life. This means that there can be no utility measurement, no appeal on merit and no limitation placed by antecedent moral rights, except for those that are embedded in the rules of the dialogue itself. The conclusion is that there is an important normative burden on the reasons for holding the principle of neutrality.<sup>48</sup> One of the reasons that seems to justify the principle of neutrality is Ackerman's liberal assumption that, because of the intrinsic value of the individuals who lives an independent life, people should be left free to make their own mistakes. For Ackerman it is almost obvious that everyone should be able to follow only the path that he/she has chosen without having to answer to others for his/her choices, at least since when everyone lives his/her life without entering into coercive interactions with others.<sup>49</sup> Without denying that there may be other things whose value can be known, Ackerman believes that the ability to develop a rational plan of life is the best thing there is and that if we want to deny it, we should find a better candidate for individuals than developing a plan of life that looks good for him/her.

But the only extended argument that Ackerman has to defend his position is what has been mentioned above, according to which each alternative position involves a controversial claim to moral knowledge, something that looks like more as a mantra than to an argument. "The hard truth is this: There is no moral meaning hidden in the bowels of the universe. All there is is you and I struggling in a world that neither we, nor any other thing, created. Yet there is not need to be overwhelmed by the void. We may create our own meanings, you and I; however transient or superficial, these are the only meanings we will ever know. And the first meaningful reality we must create—one presupposed by all other acts of meaningful communication—is the idea that you and I are persons capable of giving meanings to the world."<sup>50</sup> It would seem that only neutral liberal dialogue is able to regulate our conflict without destructive outcomes. "Yet this is just the achievement of a Neutral conversation. We begin our struggle in silence,

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<sup>48</sup> These reasons are set out briefly in the first chapter and come briefly back again in the last of *SJLS*.

<sup>49</sup> NOZICK, R., *Coercion*, in *Philosophy, Science, and Method: Essays in Honor of Ernest Nagel*, S. Morgenbesser, P. Suppes, and M. White (eds.), St. Martin's Press, 440–472.

<sup>50</sup> *SJLS*, p. 317.

each of us appropriating what we see in front of us; but soon enough we see each other and are faced with the task of giving meaning to our encounter. By speaking to one another in a Neutral way, we both succeed in giving our struggle a meaningful form. No longer is our conflict interpretable only as a blind struggle between two competing forces; instead, we may understand it as an affirmation of our capacities to impress our own meanings on the world. It is only through such an act of mutual reinforcement that we may give a concrete reality to our understanding of ourselves as people capable of living a valuable life in a world without a preordained design.”<sup>51</sup> Ackerman believes that this can also result from prudential considerations on the corruptibility of the human race. Most of us think to know something about good life, and just for this there are many good reasons to impose constraints on the liberal political conversation. Ackerman in his apparent skepticism is closed to Mill’s argument that experimentation is a vital way to progress and also to the Kantian perspective that moral goodness is not something that can be imposed, because it requires that people act on the basis of their moral beliefs. We could assume to believe “that you think you know what the good life is and that it is of a kind that can be forced on others; then the only question is whether the right people will be doing the forcing. A single glance at the world suggests that this is no trivial problem. People adept in gaining power are hardly known for their depth of moral insight; the very effort to engross power corrupts—at least if your theory of the good embraces any number of familiar moral ideals.”<sup>52</sup> This assumption on moral autonomy must come into play at some relevant point of the practice of dialogue for preventing the paternalistic assumption that you have the right to impose good if you know it. It is not important to emphasize that Ackerman does not unfold some implications of this argument against the paternalism. The important issue is that Ackerman does not think necessary to appeal to the idea of autonomy as a condition for treating the person as a responsible agent, who must answer for his/her actions. This is strange and this anomaly can perhaps be explained this way: if autonomy takes the centre stage it would mean to bind it to controversial assumptions on worthiness of the actions; but this would be equivalent of making a value judgment on actions, which seems not to be allowed in the ideal of neutral dialogue. However, this assumption on moral autonomy must come into play at some

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<sup>51</sup> *SJLS*, p. 317.

<sup>52</sup> *SJLS*, pp. 18.

relevant point of the practice of dialogue, just to prevent the paternalistic assumption that you have the right to impose your own vision of good if you believe you have relevant knowledge about it.

Even the repeated statement of the equal value of liberal citizens – that you cannot claim to know that you are better than I am – hides more than a few ambiguities, since it is not clear whether Ackerman refers to the ethical quality of the parties – for example, the same disposition to dialogue – or to the fact that they are capable of pursuing a rational plan of life (the attempt to give meaning to their lives, which would constitute the fundamental question of the humankind). The prohibition to agree to a universal form of living that is evaluated as morally superior to another, it is more an anti-paternalistic than a skeptical ideal of conduct. Liberal dialogue does not have as inevitable outcome an unnerving and exhausting loop. If we were coherent skeptical, we should give up any distributive ideal. Since it would not be possible to argue for or against different distributions, it would not be possible to assign different amounts of goods to accomplish those purposes and, therefore, each would be entitled to groped to grab as much as possible.

Ackerman, on the contrary, believes that the assumption of equality is positive, normative and substantive, and this assumption affects in a very decisive way final outcomes in distributive justice. All the actors are in fact entitled to make questions of legitimacy on scarce resources on the basis of the same principle, namely, that their life has the same value as any other else. Therefore, if it were possible to come back to an initial situation, everyone would be entitled to an equal portion of the resources. Ackerman is moved to this by the optimistic belief that even if this distribution does not make everyone able to get what he/she wants, it will be a distribution that will have the advantage of being viable and to go through the test of liberal dialogue. Of course all this only when we have made the voluntaristic choice in favor of liberal dialogue, an option that must be continually iterated and the result of which, incidentally, is not guaranteed and betting on the assumption that this choice will give the best opportunity to the citizens to build a world of meanings. “But, once again, all this can be denied. If there is no master design, the challenge is to transcend all talk of good and evil and master the universe. If God is dead, everything is permitted. But are you

willing to say this? Even if you are, will the charismatic superman fare any better with bureaucratic realities than the philosopher-king”<sup>53</sup>

It is not, however, sure that the neutrality can be effective without a strong and obvious skeptical tendency. Being possible to enforce skepticism to our choices, we may ask how can we ever be sure that the research and the realization of our own good will be on the same level with any other plan of life? Ackerman believes that individuals are willing to accept that there are differences in the value of lifestyle they adopt. He must insist on the fact that there are no gradients to assess and compare these different lifestyles, but it is this option for a value, however weak, that is the hidden strength of his repeated statement that no criticism can be made against equality without violating neutrality. With a principle like neutrality, which seems to be incompatible, at least in one of its versions, with the development of any value judgment, it is clear that everything depends on the point at which we are willing to push it. Thus, we can still try to give an interpretation in accordance with the egalitarian perspective of Ackerman. When Ackermann states that each person taking part to liberal dialogue is supposed to be worth at least as much as any other, what is meant by this expression? We can think that when citizens that take part to liberal dialogue enter into adult life, they are a kind of *tabula rasa* with regard on merits and demerits, and they, therefore, can be represented as generally equal. If you agree with this description, then what a person acquires in the course of his life or what loses, if it can be proved to be coherent with the rules of liberal dialogue, then it is just the results of his/her personal efforts and autonomous choices. The remaining inequalities would be justified within a structure of egalitarian opportunity. This move is understandable on the background of the anti-utilitarian assumption that bans a single gradient for the measurement of assets, for which Ackerman seems to have avoided the pitfall of having established an equivalence between equal opportunity and equal satisfaction. However, this possibility is measured in relation to the satisfaction that equality via neutrality is able to give and this means that Ackerman is surreptitiously introducing some criterion of comparison that should enable us to establish that the initial situation of equality is better than other.

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<sup>53</sup> *SJLS*, p. 318. For an application of this idea within contemporary political liberalism, see *The Future of Liberal Revolution*, p. 43.

On behalf of Ackerman who is speaking? It seems on behalf of those who have already accepted the whole structure of liberal dialogue, because it is in this structure that the principle of equal satisfaction is rejected since it implies to reach the agreement on a differentiated distribution of goods, that would therefore violate neutrality. The idea that the equal distribution achieves the greatest possible measure of opportunities in a world of scarce resources is certainly plausible and consistent with Ackerman's liberal background, but has a number of drawbacks. One is that not all projects have the same costs. For some agents, therefore, the initial distribution situation will be clearly not a point of balance. These agents may also be dissatisfied with the idea of achieving balance in subsequent transactions between agents, because this would mean for them extra efforts and failure and loss in terms of satisfaction.

Another difficulty is indicated by the simple fact that it is not clear that everyone should have a goal or set of goals by mean of which they are going to order their own lives. If we apply this idea to all the inhabitants of liberal democracies, we make a gross error of judgment. But even if we are thinking hypothetically, it is not clear that being liberal citizens means to devote himself/herself to self-realization. It may just mean as well the freedom to live as much as possible without clear goals.<sup>54</sup>

Even if we were to discover that having a plan of life is a necessary condition for being liberal – which in fact is not – that will not mean that it is clear that there must be a general moral agreement on the fact that the plan of a person's life is a good thing, regardless of the content of that plane. Therefore Ackerman will always find someone who will object that, since we do not have a criterion for distinguishing between good and evil, we are not able to make clear and shared assessments of the choices and actions of other people. But this is precisely what Ackerman is not willing to accept. And from his point of view it is a legitimate choice, in the sense that the moral

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<sup>54</sup> Regarding existing societies, we would then be able to specify what conditions must be met for the political community to organize their struggle for power in accordance with the epistemology of neutrality. This happens when it is possible to ensure that: a) no citizen genetically dominates the other; b) every citizen receives a liberal education; c) every citizen starts adult life in the material conditions of equality; d) every citizen can freely exchange his/her goods within a flexible network of exchanges; e) every citizen, at the time of his/her death, can be said to have fulfilled his/her obligations if the he/she delivery to the next generation a society no less liberal than that in which he has lived.



autonomy, that allows us to operate those options that he weighs positively – to choose our own rational plan of life – , only makes sense against the background of correlative intuition that there are limits to the range of choices that are open to the liberal citizen. The priority of the dialogue on substantive choices is just a mask for drawing the limits of allowed behaviors in a liberal society, and these limitations design that priority. Violence, deceit, lies and, in general, the anti-social behavior are rightly deemed incompatible with participation in neutral dialogue and therefore unacceptable. But this is a completely implausible and indirect way of excluding immoral and anti-social behaviors. Must we exclude violence and torture for the sake of fun simply because they interfere with neutral dialogue?<sup>55</sup> Can this be a sufficient reason? If that were the case, then neutral dialogue could not go ahead without an explicit prohibition against certain forms of violence, and this obviously does not need to happen if not for moral reasons that are previously asserted.<sup>56</sup>

Dialogic principles, especially equality and undominated neutrality should supervise on justice in transactions between individuals. However, even if we lived in an ideal society governed exclusively by the liberal dialogue we should “Consider the likely position of the parental generation when it lets go. While in the beginning a material equality prevailed among an undominated citizenry, in the end there will be a great disparity in personal histories. Some will have used the transactional system to gain enormous wealth; others will die with nothing but their name. Some with few material possessions will exercise great moral leadership in one or

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<sup>55</sup> Why do we have the intuition that torturing innocents for fun is wrong in every possible world? It is not, maybe, because torturing innocents violates liberal dialogue, since we can imagine worlds where it is not morally wrong not to practice the dialogue as it is described by Ackerman. On the problem of moral intuitions see BENNET, J., *The Necessity of Moral Judgement*, “Ethics”, 103, 1993, pp. 458– 472.

<sup>56</sup> The suspicion that Ackerman is continually forced to assume that the dialogue has a substantive aim emerges from the idea that we can limit the participation to our liberal community also against anyone who is willing to practice liberal dialogue but currently does not participate in our community. This is tantamount to admitting that citizens are entitled to an equal share of manna only if they are able to defend their claims and only if they are already members of that same community. But the reasoning is not circular, unless the option for the dialogue in a community is not also a choice for the preservation of order, that is a form of protection and exclusion. So, what could we say to those who ask us for becoming part of our community? Can neutrality rationally explain this exclusion?

another community; others will amass material fortunes to find themselves the objects of widespread contempt. Still others are solitary and poor—some brutish, some wise. As this multitude nears death, most will wish to influence the future in a way each thinks good.”<sup>57</sup> In this ideal world recriminations on the final distributions are not possible – provided, of course, that they fail to demonstrate that at some point the structure of liberal dialogue has been violated. All this presupposes a complete technology of justice and full information for the parties involved in the transactions, things beyond our ability. Things in our real world go on in a very different way. Existing inequalities simply cannot be justified from the point of view of liberal dialogue.

Conditions of inequality bind, according to Ackerman, the activism of the liberal State – how else, I wonder, if not from an ethical point of view? In fact, when inequalities and externalities focus on individuals and particular groups, Ackerman believes that his scheme would require and justify a vigorous work of redistribution of wealth to get closer to that transcendental and archimedean point, in which only makes sense to talk about fully informed free choices for agents. But inequalities and exploitative situations are, in fact, more than one and it is not clear which order of priority should be set for reducing them, without violating neutrality. Choosing which of the possible priorities will better serve the cause of liberal dialogue, implies a strong consensus on the normative core behind the dialogue itself.

In these circumstances it is not believable, as dictated by Ackerman, that the principle of neutrality will give us the rule that compensate the abandonment of the neglected idea of the idea of fundamental rights, achieving the fulfillment of the dialogic community. “The first stage involves the selection of a budget that *prima facie* serves as the best approximation of liberal ideals. The process may be analogized to a mathematical problem in constrained maximization. The constraint is the idea of equal sacrifice: since everyone is at least as good as everyone else, no one can be called upon to sacrifice more of his ideal rights than anyone else. Within this constraint, the statesman’s task is to choose the budget that best fulfills the liberal ideal of undominated equality.”<sup>58</sup> However, it is far from being clear that this exclusion can be decided on the basis of a neutral

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<sup>57</sup> *SJLS*, cit., p. 277.

<sup>58</sup> *SJLS*, p. 225.

procedure. Neutrality is indeed bound by something that is not neutral, but it is a value to pursue or to be maximized. And saying this is the way to open a selective procedure for some values at the expense of others, in this case towards the presumed consent of the citizens to certain forms of distribution that seem better to encourage the practice of dialogue as the way to exercise of autonomy and free will for fully informed citizens.

Ackerman is aware that the emphasis on the idea of will highlights the most significant point of contact between his dialogism and Rawlsian contractualism. “In protecting any relationship that is the product of a free exchange between consenting adults, ideal liberal theory attempts a rapprochement with voluntarist ideas central to the contractarian tradition. Nonetheless, differences remain. Most important, my theory does not deal in the imagined consent accorded by primitives emerging from a prepolitical state of nature hypothesized by classic writers. Nor do I join Rawls in appealing to a hypothetical consent said to be forthcoming from citizens who have stripped themselves of self-identity and all understanding of their particular social situation. Rather than making a metaphor of consent, ideal theory focuses upon the explicit agreements made by flesh and blood people on the basis of their particular insights into the concrete opportunities that social life affords them. Rather than imagining that all citizens assent to a uniform social compact, ideal theory permits adults to enter diverse forms of consensual community that best express their particular ideals. Yet, for all this, liberal theory retains an affinity with contractualist concerns—at least if the core of this tradition is an insistence that the forms of social life be rooted in the self-conscious value affirmations of autonomous individuals.”<sup>59</sup> This is the reason why the interpretation of the dialogue in a procedural way is quite incomplete, as happens with Rawls’s principles: “Thus, Nozick tries to specify principles of fraud and duress as if this effort had nothing to do with the principles regulating other dimensions of the power struggle; Rawls returns the compliment by restricting his principles of justice to something called the ‘basic structure’, specifically exempting all issues involving the fairness of particular transactions. In contrast, the dialogic principles regulating free exchange are an inextricable part of a larger liberal theory of social justice. Without transactional flexibility, a liberal State cannot defend the property system—be it individualist or

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<sup>59</sup> *SJLS*, pp. 173, where Ackerman shows a remarkable misunderstanding of Rawls’s position, emphasizing his alleged lack of interest in the actual agreements.

collectivist—under which initial claims to material wealth are distributed. If a citizen has obtained a transactional advantage over his fellows, he must respond to the same question of legitimacy that confronts the holders of genetic, educational, or material advantage. Rather than drawing an arbitrary limitation on the scope of its principles of legitimacy, liberal dialogue governs all dimensions of the power struggle—whether they concern micro— interactions between two individuals or macro— dealings between generations”.<sup>60</sup> This is what justifies the idea of an intervention of the liberal State to correct the most obvious injustices, that for Ackerman seem to identify in the limitations – informative, due to competition from free riders, or to the prevalence of externalities limiting inefficiently the free choice of liberal agents – of free exchange between citizens.<sup>61</sup> In order for this to happen “On the level of policy, this attitude will be reflected in a continuing insistence that the claims of free contract be appraised against the background of power relationships established by the transactional framework and the distribution of wealth, education, and ability. On the philosophical level, the liberal can have the courage to question the doubtful notion that a promise, once fairly made, must always be kept. Freed from the emphatic certainties about the self and time implicit in the contractarian’s position, he can permit himself to wonder about these mysteries without discrediting the master concept organizing liberal thought.”<sup>62</sup> All these qualifications are strictly tied for Ackerman with the central idea of voluntary free exchange as a mean for the approximation to ideal equality and neutrality. But for creating approximately similar conditions to a situation of ideal exchange the State is forced to continuous corrective interference – without guarantees that unjust inequalities will not appear again in the near future.

The idea of an always voluntary free trade transaction is, therefore, a regulative idea in our world, where imperfections of present societies would seem to overwhelm and deny the promised freedom of an ideal world of

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<sup>60</sup> *SJLS*, p. 172.

<sup>61</sup> For example, if the demands of an ideal system of transitions are not met in some significant part, then the person who is being treated unfairly has the right to request a State intervention that helps to approximate the results that would be achieved in a ideal exchange network (*SJLS*, pp. 348– 352).

<sup>62</sup> *SJLS*, p. 274 It should be taken into account that when there were inequalities in the acquisition of assets, or defects in liberal education or serious genetic handicaps, then the assumption of a mutual negotiation without restrictions is not possible.

equal starting points and perfect mechanisms of exchange. What does remain in our world of the liberal commitment to the voluntary agreement if not its strong ethical endorsement, also in Ackerman with all its kantian halo?

Dialogism is the tentative shaping of mechanisms of competition between social actors. It is both a rationalization and a justification, an ethical *arché*, and a moral *telos*. Its practical significance should lead us to conclude that since our real situation is one in which are predominant conditions of imperfect information, where market does not comply with the conditions of dialogue, then we would be entitled, from a moral point of view, not to follow the normal bonds that give content to the actual social contracts. According to the neutralist methodology, which is only the other face of a dialogical ethics, where the markets are imperfect and communications are inadequate, the damaged actors would, therefore, have the possibility not to apply the obligations of a contract simply by referring to alternative gains that they could obtain under other conditions, that are supposed to be closer to those ideals. But this would bring us back, if it could really happen, to a situation near to a hobbesian state of nature, from which it would be very hard to earn back the conditions of liberal dialogue.

This does not happen in Ackerman because it is assumed that this rapprochement between real and ideal is the ethical task of the liberal citizen, as an asymptotic approximation and an infinite task, which can be justified only by consensus on a normative core and with a strong commitment in favor of a communitarian ethics. The principle of equal sacrifice, which ensures that deviations from perfectly liberal conditions are distributed in equal parts, can only be a weak gimmick, because it assumes what it is to prove, namely, that parties and actors have an equal interest or an equal ethical motivation to reach a situation of undominated equality through the iteration of dialogical performance.

Ackerman believes that each group must develop these issues in the light of their own circumstances and conceptions of the good, because his theory only provides a framework within which the concerns of traditional doctrines can be reformulated and refined.<sup>63</sup>

But what Ackerman adds is a faith in free trade on the basis that it encourages individual to see himself/herself as an achiever of goals and to pursue his/her own conception of the good. One could always think that

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<sup>63</sup> *SJLS*, pp. 271–274.

allowing our real transactions on a background of injustice means favoring certain groups or certain individuals, violating neutrality. So the choice for a non-ideal society – our liberal-democratic society – is discriminatory precisely in the sense that Ackerman should avoid on the basis of dialogical constraints, and can be effective because consensus, virtual and tacit, is the reality that structures our liberal community previously to any pure procedures, which, in Ackerman as in Rawls, are instead the foundation of liberal political order as an ethical space.