

AN ETHICAL FRAMEWORK FOR INTERNATIONAL POLITICS:
A Neo-Hegelian interpretation of the role of States in the construction of just
principles

by

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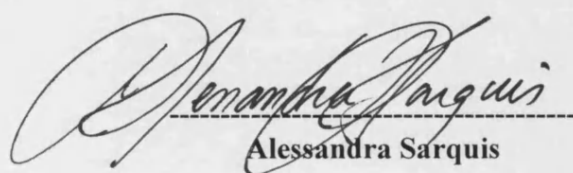
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Abstract

In an increasingly interdependent world, the scope and effectiveness of states' authority are being contested. A key question is posed: to what extent does the state remain fundamental in the provision of institutional mechanisms through which individuals constitute themselves as morally motivated agents and interact with otherness in a self-assured and meaningful way?

A critical review of the contemporary literature of justice finds no satisfactory answers to this question. By assuming universal rationality and the state's instrumental role in individuals' moral formation, cosmopolitans derive far-reaching international just principles that will preserve individuals' integrity and regulate their interactions. They fail, however, to recognize that states influence the way individuals interpret and identify with the values underlying these principles, condemning them to unfeasibility. Communitarians and theorists of nationality understand individuals' ethical formation to be conditional on their common sense of belonging. By doing so, they end by constructing undesirable international principles that restrain individuals' exercise of critical thinking and links to the outside world.

A neo-Hegelian framework, which does not disentangle individuals' development of independently thinking capacities from the construction of a historically situated system of rights, is in a better position to answer the question. Its success however depends on a deeper comprehension of a state's ability to provide the sought-after mechanisms at two levels. First, citizens must not only mutually recognize each other as equally valid sources of independent claims but must also make use of similar basic values and motivational skills to fairly interact with non-compatriots, exchanging viewpoints in the construction of their distinct personalities. Second, the states increasingly need to agree on forms of regulation (international principles of justice) that, though based on the mutual recognition and support of their self-determining ethical capacities, do not alienate the inputs from other actors of the international society (e.g. international civil society and states contesting ethical values). The incorporation and

interaction of these two levels is the way to establish the legitimacy and applicability of international just principles.

The originality of this thesis resides in the development of a new interpretation of familiar Neo-Hegelian arguments to address the overlooked issue of the sources of ethical motivation underpinning regulation in an increasingly interdependent world.

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Table of Contents

Declaration	2
Abstract	3
Acknowledgements	5
Introduction	8
1. Impasses in the Theorization of International Morality	8
2. Method of Analysis	18
3. Outline of the Argument	22
 PART I – ASSESSMENT OF THE CONTEMPORARY DEBATE ON JUSTICE	
 1. Rawls’ Legacy to the Debate	 27
1.1. The Construction of the Original Position (OP) and the Path to Universalism	30
1.2. Problems facing the OP’s Construction: The Particularist Critique and Rawls’ Counter-argument	39
1.3. Towards an Ethical Approach	47
1.4. Concluding Remarks	51
 2. Universalism	 53
2.1. Critical Issues in the Universalistic Argument	55
2.2. Interpreting the Rawlsian Framework: Universalism in the Works of Beitz and Pogge	57
2.3. Barry’s Innovative Theoretical Scheme	63
2.4. Concluding Remarks	77
 3. Particularism	 79
3.1. Critical Issues in the Particularistic Argument	80
3.2. Communitarian Thought in the Works of MacIntyre and Walzer	83
3.3. Nationalism according to Miller and Tamir	90
3.4. Concluding Remarks	102

PART II – CONSTRUCTING AN ETHICAL FRAMEWORK FOR THE DELIBERATION OF INTERNATIONAL JUST PRINCIPLES

4. Individual Autonomy and Political Community	104
4.1. The Instrumental View	105
4.2. The Constitutive View	114
4.3. The Ethical View	118
4.4. Concluding Remarks	129
5. Characterisation of International Society	131
5.1. The State as Ethical Entity	134
5.2. The Relationship among Ethical States	143
5.3. The Recognition of States Holding Different Understandings of Ethical Values	151
5.4. The Argument for Moral Sensibility	156
5.5. Concluding Remarks	163
6. On International Obligations	165
6.1 The Principle of Self-Determination and its Limits	167
6.2. The Need for Complementary Principles of Justice: The Duties of Assistance and Intervention	174
6.3. Illustration: The Iraq War	182
6.4. The Building up of Institutional Mechanisms to Uphold International Principles of Justice	190
6.5. Concluding Remarks	193
7. Conclusions	196
7.1. Summary of the Argument	196
7.2. Implications of the Argument	199
Bibliography	202

INTRODUCTION

1. Impasses in the Theorization of International Morality

This thesis is concerned with the current state of the debate in international political theory, in particular the possibility of norms of international justice. There have been efforts, as shown most recently by the analyses of Singer, Beitz and Frost, to attach a far-reaching moral dimension to international relations as part of the revival of a normative thinking that defends a liberal universalistic agenda aiming at the construction of more inclusive and just principles of international order.¹ But the implied need for these analyses to recognize far-reaching principles of international justice that are able to preserve individuals' integrity and regulate their interactions in an increasingly interdependent world has still to be addressed in relation to two interconnected questions. First, how are moral agents actually constituted through their relationship with a bounded political community? Second, how do they come to interpret and identify with the values underlying these principles? In these terms, it is essential to understand in what ways the state remains fundamental in the provision of institutional mechanisms through which individuals can develop themselves as morally motivated agents and interact with otherness in a self-assured and meaningful way.

The issue that I am addressing is a broad one, more so when one considers the fact that an international environment is marked by differences in approaches on the good life that are remarkably stronger than the ones present in a multicultural national environment. But I intend to narrow it by showing precisely where it is located in the present debate of international political theory and what are the implications of raising it in this context. There is some agreement among contemporary authors, such as the ones referred to above, that issues related to international morality are perceived as a marginal

¹ M. Cohen, "Moral Skepticism and International Morality" in Charles Beitz & alli, International Ethics (Princeton, Princeton University Press, 1985) pp. 03-50 and Mervyn Frost, Constituting Human Rights: Global civil society and the society of democratic states (London, Routledge, 2002) pp. 17-39.

concern in the current framework of theories that dominate the study of international relations.² That happens mainly because these theories tend to construct their arguments around the fact that the international environment has a different dynamic than a national one, characterized by sovereign communities (states) that can never in principle be subjected to a final authority. In stressing the political communities' ultimate independence, these theories tend to answer either in a skeptical or in a legal-rationalist way to the question of whether moral standards can be applied to international relations.

Skepticism is illustrated by the realist tradition and its further neo-realist development. For this tradition, what defines international relations is the power-relation among states.³ This assertion is based on four basic assumptions.⁴ First, sovereign states are the main units of an international system. Second, domestic policy is a separate concern from foreign policy. Given the lack of a final authority in the international environment, the standards of behavior applied in this environment differ from the ones that define behavior within a national unity. That leads to an understanding of the statesman as someone who is guided by a different notion of morality, one that safeguards national interest from external threat. In international relations (hereafter abbreviated as IR), it could lead him to take actions that are considered unacceptable from a national perspective. Third, international politics is a struggle for power in an anarchic society. Therefore, the best way to preserve or pursue the national interest is to prevent others from having too much power. Fourth, the notion of power is linked to the idea of capabilities (economic, military and technological resources) and the differences present in terms of possession and use of these capabilities among states. As a general rule, a balance between great powers, that means the states considered the most powerful ones in terms of capabilities, must be added to the system to allow order to prevail.⁵

² Peter Singer, "Famine, Affluence and Morality" in Charles Beitz & alli, International Ethics ; Charles Beitz, "Justice and International Relations", Ibid.; Mervyn Frost, Constituting Human Rights: Global civil society and the society of democratic states.

³For Morgenthau, international politics is defined fundamentally as a struggle for power. H. J. Morgenthau, Politics Among Nations: The Struggle for Power and Peace (New York, McGraw-Hill, 1985) pp. 25-26.

⁴ In this qualification of a realist approach, I am basically making use of Dougherty and Pfaltzgraff's understanding of a realist approach. J. Dougherty & R.L. Pfaltzgraff, Contending Theories of International Relations: A Comprehensive Survey (New York, HarperCollins Publishers, 1990) pp. 81-83.

⁵ Further developments of this approach, associated to what is called a neo-realist tradition, have come to offer a more coherent and structured theoretical framework to the above assumptions. In this sense, it is

What is important here is the way this skeptical view understands international relations as being part of a differentiated and nebulous sphere of morality. There is a clear differentiation between national and international morality derived from the diverse roles the political community is supposed to perform. At a national level, the political community is responsible for preserving individuals' rights by being a mediator and enforcer of rules. At the international level, its only concern is the pursuit of national interests making use of the capabilities available to achieve that. That concern opens the way to a flexible understanding of what are to be considered moral or legitimate attitudes in this last sphere. In its best interpretation, international morality will be seen as a by-product of the national interests that drive the prevailing arrangements among great powers; at its worst there is no international morality.

In contrast to skepticism, there is what I call a legalist-rational approach to moral issues in the international domain. That is mainly illustrated by the dominance of a jurisprudential thinking founded on rationalist presuppositions. In line with Martin Wight's argument for a rational tradition, one can say that this approach sees law as being the foundation of society. It is the effectiveness of a set of norms backed by sanctions that make social interactions possible or stable. In other words, the well-functioning of a society is dependent on the existence of a sovereign legislature that has in the state its enforcement agency. But it is important to point out that the spirit of law is given prior to any social arrangement and can easily be grasped by reason through observation and sense-experience of such interactions.⁶

Following this reasoning, there is a lack of a superior entity responsible for providing law-abiding behavior at the international level. Nonetheless, this realization does not imply that the realist is right to describe a political community's interaction as dominated by a power relation. Political communities are considered members of an international system that, though missing a clear enforcement mechanism, is still guided,

worth pointing to the work of structuralists such as Waltz. According to him, an analysis of the power structure of the anarchic society is related to the understanding of how the units differently juxtaposed and combined can come to produce different outcomes. And concerning this, the need to rely on whatever means or arrangements they can generate to ensure survival and enhance security will greatly determine what the state components can actually do. K. Waltz, Theory of International Politics (Reading Mass, Addison Wesley Publishing Company, 1979).

⁶Martin Wight, International Theory: The Three Traditions (London, Leicester University Press, 1996) pp. 38-39.

if not by explicit consent, by the tacit acceptance of common principles. As Wight observes, interactions among communities are guided by custom and elastic principles founded on the settlement of disputes by diplomatic arbitration.⁷

It is however essential to point out that the analysis of moral issues from this perspective still suffers from double standards. Although guided by custom and principles founded on issues raised in diplomatic arbitration, interactions between communities are still fundamentally dependent on their discretionary power. The final instance of appeal is still the state with its perception of national interests and concerns.

However gradually, I think these two predominant perspectives on morality in relation to international politics are being challenged. There seems to be a natural demand for understanding morality not in terms of a double standard but as an integral whole that has similar implications for both the national and international spheres. In part that happens because of the need to address the fundamental needs of individuals and the constitution of communities in an increasingly interdependent world. While the individual is pushed to look for a sense of identity in a more complex environment marked by technological transformations, the state faces difficulties in grasping its role in a milieu where the scope and effectiveness of its authority is contested.

In a rapidly changing world, there is a need to understand the centrality of international just principles (such as human rights principles) for securing individuals' integrity while at the same time leaving them enough space to explore new possibilities of interactions. More importantly, there is a need to ask a different sort of normative question with profound consequences for the understanding of international relations. What is required is not simply to evaluate the ends and legitimate means participants in international relations can adopt for pursuing their own ends. It is necessary to understand the perspective of the ethical relations among these participants, particularly between the individual and the political community of which she or he is a member, and its implications for the construction of an international order.⁸

⁷ *Ibid.*, p. 39.

⁸ I here agree with Cochran on what should be the aims of normative questions in international relations theory nowadays. See M. Cochran, Normative Theory in International Relations: A Pragmatic Approach (Cambridge, Cambridge University Press, 1999) p.03.

The debate between cosmopolitans and communitarians illustrates this search for a better understanding of the ethical components of the relations between individuals and their political communities as well among the units of an international system. But the debate between these two perspectives is far from being fully adequate. Let me quickly point to the basic shortcomings of these two views. By assuming universal rationality and the state's instrumental role in individuals' moral formation, the cosmopolitan approach is able to defend the idea that international society can be conceived, as Wight describes it, as "a civitas maxima", the domestic politics of the universal "civitas".⁹ In these terms, this society can address concerns and interests of individuals living worldwide independently of the social attachments they have to specific political communities. They can also formulate far-reaching international just principles on the basis of these concerns and interests.

In the contemporary debate on global justice, this view is illustrated by cosmopolitans such as Beitz and Pogge. Both authors try to expand the implications of a Rawlsian approach, as described in the definition of the original position in *A Theory of Justice*, by arguing that the elements defining a moral person (related to his capacity to form and follow an idea of the good as well as to have a sense of justice) can be potentially found in individuals all over the globe. That happens because individuals are by definition to be regarded as self-originating sources of valid claims given their universal reasoning capacities and their equal status. Moreover, they can increasingly be seen as participants of an interdependent economic process that tends to reinforce this equal standing by homogenizing general values and behavior.¹⁰ As a consequence, there should be a clear and far-reaching defense at the international level of the essential values (freedom and equality) that allow individuals to function as moral agents.¹¹ This

⁹ For Wight, the international relations will be conceived as the domestic politics of the universal "civitas". Martin Wight., *International Theory: The Three Traditions*, p. 41.

¹⁰ Charles Beitz, *Political Theory and International Relations* (Princeton, Princeton University Press, 1979).

¹¹ Pogge makes specific the argument for a value-based order, in which political communities accept morally rather than only prudentially the continued existence of one another and the values central to their constitution. Following this reasoning, he will argue for reasonable pluralism to be applied to the international sphere. Three conditions have nonetheless to be fulfilled: 1) parties are convinced that there ought to be a fair scheme for the distribution of benefits and burdens among all parties; 2) that parties can identify and perhaps extend some common values; 3) that each is willing to modify their values to some extent. Thomas Pogge, *Realizing Rawls* (Ithaca, Cornell University Press, 1989) pp. 228-229.

cosmopolitan defense encompasses a comprehensive notion of international human rights, involving an equal standing for both the first and second generation rights.¹²

There is no question that the cosmopolitan approach leads to an ethical understanding of international relations, one based on encompassing common ethical values rather than merely on prudential rationality as suggested, for example, by Gauthier.¹³ But this understanding suffers from an underlying weakness. As individuals are already regarded as well-defined moral agents and the political community is relegated to a mere instrumental role in the formulation and the pursuit of this ethical order, the formation of moral personalities and consequently how one becomes motivated to act at the international level are not up for question here.¹⁴ This is problematic because it leads us to doubt the usefulness of the theoretical exercise proposed by cosmopolitans. Such an exercise can be easily portrayed either as centered more in aspirations than in what can actually be attained in practice or as an uncritical defense of, if not the imposition, of values that characterize liberal societies. By uncritical defense, I mean that there is a lack of sufficient reasons to explain why values such as freedom and equality are to be perceived as fundamental in human development as well as how they can actually be realized given the historical constraints facing moral agents.

On the opposite side of the debate, there are the communitarians. They emphasize the fundamental importance of the community in the formation of moral personalities. According to these theories, it is within historically specific communities that meaningful relationships among individuals are made possible through the attribution of social roles by which they can guide their behavior and ultimately provide meaning to their actions. In this sense, the community is to be regarded as the ultimate source of value in moral thinking. And in assuming this function, it has the right to take autonomous actions to keep social cohesion and the uniqueness of a cultural environment that provides distinctiveness to its members. What is implied by these actions will vary depending on the way the membership of a community is to be defined, most frequently

¹² First generation rights include basic political and civil rights while the second generation refers to socio-economic rights.

¹³ David Gauthier, Morals by Agreement, (Oxford, Clarendon Press, 1986).

¹⁴ Cochran points to the same problem. M. Cochran, Normative Theory in International Relations: A Pragmatic Approach, p. 50.

in terms of the need to share a common political culture, as shown by Miller, or a national consciousness, as defended by Tamir.¹⁵

Although the communitarian approach calls attention to individuals' actual need to have socio-historical references to develop himself as an active moral agent, it overstates the role of the community in defining these references. Consequently, it puts inconvenient obstacles to the construction of a far-reaching international moral order. Walzer illustrates the point in his defense of complex equality, where he argues that different issues should be treated by different distributive spheres within political communities, but justice is primarily to be seen as an internal (national) concern.¹⁶ This understanding does not prevent communities making a common effort to construct moral principles at the international level. But it puts a significant constraint on the content of the principles and their scope of application. The content of these principles would be rather thin, centered in the mutual recognition of particular just schemes and the acceptance of common presuppositions present in the various systems of rights. And the communities would maintain most of their discretionary power in interpreting and applying these shared norms.¹⁷

I think a valid way out of the difficulties found in the debate between cosmopolitans and communitarians is offered by neo-Hegelian interpretations of the ethical role exercised by the political community. Contemporary proponents of a neo-Hegelian interpretation include, for example, Habermas on the continent as well as Charvet and Frost in Britain. These theories are based on the reconciliation of the social (as a historically situated construction that influences individuals' identity) and the individual (as independent thinker) dimensions through the understanding of individuals' participation in a series of juxtaposed practices – family, civil society, states, the system of states. In this understanding, the individual's participation as a citizen of a bounded political community, which allows her to consider others as equally valid sources of

¹⁵ David Miller, On Nationality (Oxford, Clarendon Press, 1997); Y. Tamir, "Reconstructing the Landscape of Imagination" in Simon Caney, D. George & Peter Jones (eds.), National Rights, International Obligations (Oxford, Westview Press, 1996).

¹⁶ Michael Walzer, Spheres of Justice: A Defence of Pluralism and Equality (United States of America, Basic Books, 1983).

¹⁷ Michael Walzer, Thick and Thin: Moral Argument at Home and Abroad (London, University of Notre Dame Press, 1994).

independent claims and to learn how to reciprocate commitments, is fundamental to their constitution as a self-understanding active moral agent. The success of this participation is nonetheless dependent on the State being able to recognize and maintain individuals' abilities to form and apply independent judgments over the good, and maintaining a system of rights that can be influenced from these independent judgments.¹⁸ And it is also dependent on the state being recognized by other states at the international level as having the ability to carry on these ethical functions in a self-determining way.

In different ways, these three authors bring insights to the further development of an ethical approach and I will be referring to some of these insights when constructing my own interpretation of the approach. But Frost's analysis is of particular interest here because by specifically focusing on the international dimension it can be used to better situate the points I will be raising in this thesis. For Frost, no proper understanding of international relations is possible nowadays without comprehending the place of individuals' human rights in two foundational practices, international civil society (where individuals see each other as human rights holders – civilian rights) and democratic states in the system of democratic and democratizing states (rights of citizenship). While within the first practice individuals see each other as participants irrespective of being located in a particular community and therefore are able to freely discuss the social arrangements they live by, within the second one they present themselves as rights-holders of a particular state, backed therefore by a clearly defined authority.¹⁹

His basic concern is to understand the architecture of these practices and how they relate to each other. The shortcomings of individuals' enjoyment of their participation in the civil society, including alienation, competition, inequality in economic-social rights as well as lack of authority, is much compensated by their political participation in a state. It is the state that is able to provide the necessary institutional mechanisms through which individuals effectively learn to mutually

¹⁸ It should be clear that there is no denial of individuals' critical assessment of the diverse practices they participate in. One's self-understanding can only develop so far as one can become master of the social roles one performs, learning to critically assess them and identify with them. In this sense, there is no division between an idea of a person that is personally chosen and one that is socially constructed. They are both integral parts of the individual's development. See Allen Wood, *Hegel's Ethical Thought* (Cambridge, Cambridge University Press, 1995) p. 197.

¹⁹ Mervyn Frost, *Constituting Human Rights: Global civil society and the society of democratic states*, pp. 40-47.

recognize each other as valid sources of independent claims, empowering them to claim and respect rights in an international civil society.²⁰ But the state is only able to perform this function when it is understood as a relationship of mutual recognition with other ones – in which citizens of other states recognize me as one who together with my compatriots is able to autonomously govern myself in terms of constitutionally prescribed rules. The ethical standing due to a citizen at this level ends by putting procedural constraints on how citizens or their representatives must conduct international politics.

Despite generally agreeing with the analysis of Frost, I think there is still a gap to be bridged between stating the centrality of international human rights and paving the way, even if through reasonable arguments, to the effective recognition by different participants of an international society of the importance of abiding by these principles nowadays. The way I propose to bridge this gap is to reassess states' ability to perform their ethical role in individuals' constitution in face of the challenges and opportunities imposed by an increasingly interdependent environment. It is to present arguments to justify states as the most fitted entity capable of providing for institutional mechanisms (both at national and international spheres) through which individuals can constitute themselves as motivated moral agents and deal with otherness in a meaningful way in this changing environment.

Let me explain. By morally motivated agents, I am not referring merely to an individuals' ability to claim (to have a conception of the good and defend it) and respect rights (to act upon and apply principles agreed) as proposed by Frost but to their actual ability to come to identify with the values (equal freedom) that sustain them. Identification here means to become critically aware of the way these values give sense and become directly applicable to the construction of my personality and to the way I interact with otherness (compatriots and non-compatriots) so as to grasp the components of this identity. By the state's provision of institutional mechanisms, I mean the state's ability to provide for the exercise of mutual recognition taking place among its citizens in the actual construction of a historically situated system of rights, which is foundational in the constitution of these morally motivated agents. It also refers to the state's ability to guarantee that this exercise of mutual recognition becomes meaningful for its citizens in a

²⁰ *Ibid.*, p. 58.

context where they tend to intensify their links with groups of a dynamic international society and citizens from other states.

On one hand, this state's ability to provide for institutional mechanisms refers to the implementation of constitutionally defined democratic procedures guaranteeing that the exercise of mutual recognition among citizens be widespread while not alienating the inputs coming from an increasingly interdependent world. In these terms, it also refers to the possibility of creating a debate among citizens to define to what extent the inclusiveness of the claims of non-compatriots does not put at risk the ethical exercise implied in the construction of a distinctive systems of rights. On the other hand, it increasingly depends on a deeper understanding of states' interactions in terms of their ethical need to mutually recognize this self-determining capacity in this context and to use this recognition so as to construct more workable international just principles.

This deeper understanding of states' interactions involves above all a better appreciation of the place of diversity in international relations. If individuals' essential moral capacity for rational thinking is universally given, its elaboration in a set of particular ethical principles of conduct is contingent on space and time. It is dependent on individuals' participation in the actual construction of a state' structure (a system of rights). The plurality of states at a time, when qualified in terms of states' ability to recognize each other in their distinct self-determining capacities (each being considered a unique ethical locus to their citizens' moral development) while being open to the claims of each other and to inputs of an international civil society, provides for a broad spectrum of experiments through which it is possible to have a clear grasp of the common conditions necessary for individuals' moral development. It renders possible a cross-examination and re-evaluation of states' historically contingent presuppositions on fundamental individual rights and from then on to derive common conclusions that underpin the robustness of international just principles, their legitimacy and enforceable power.

Following this reasoning, international society is continuous with national structures in their moral relevance to the individual. Increasingly so if the diversity of states implied in this conception of society is not taken to be a mere fact of international relations, linked to how individuals holding different citizenship do things differently or

come with different interpretations of positive and negative rights, which should be recognized in theoretical analysis.²¹ It is considered the very means through which an enlightened comprehension of the regulatory mechanisms necessary to interactions among morally fit individuals living in an increasingly interdependent world can be obtained.

2. Method of Analysis

The thesis is a conceptual and theoretical analysis based on three interconnected sets of claims. First, the state is an ethical unit fundamental in developing individuals' self-awareness as active moral agents. Second, sovereign states are to relate to each other vis-à-vis the potential role they are to perform in these individuals' moral development. Finally, the understanding of states' interactions on the basis of their self-determining capacity to perform their ethical role paves the way to the formulation of viable international principles of justice.

In order to be able to make these claims, I construct my own interpretation of a Neo-Hegelian approach considering the notions of desirability and feasibility. By desirability, I mean that the structure of the arguments I present could stand up by itself, being rationally coherent and achieving a degree of cohesiveness among concepts used. I also mean that some normative desirability could be deduced from the analysis. In other words, my analysis is able to take into consideration a society's overall intuitions on the subject of justice, in this case liberal societies where this analysis begins and from where fundamental elements to the realization of an ethical state can be found, and is clearly able to assess the current needs of this society.²² Moreover, it is eventually able to extrapolate these considerations to the relation of states in an international society without alienating non-liberal societies as well as other actors of an international society.

²¹ According to Frost, "the whole notion of individuals having citizenship rights which entitle them in setting up states, choosing governments for them and holding their governments to account, is premised upon the knowledge that not all citizens think alike." Mervyn Frost, Constituting Human Rights: Global civil society and the society of democratic states, p. 118.

²² In this particular point, I am making reference to Rawls' method of *reflective equilibrium*. See John Rawls, A Theory of Justice (Oxford, Oxford University Press, 1973) pp. 48-51.

By feasibility, I mean that my theoretical analysis should have a strong ground in reality. What I propose is based on observation (empirical evidence), more particularly associated with the development of an increasingly interdependent world. Finally, this analysis could eventually motivate actual individuals to take actions on the basis of its normative requirements.

In comparison particularly with the analysis of universalists (cosmopolitans) and particularists (communitarians and theorists of nationalism), my interpretation of a Neo-Hegelian approach is best positioned to offer this balance between desirability and feasibility because it builds a coherent argument on the rationality of an ethical state, whose basic features can be seen as acceptable and realizable to a significant degree in the world today. The argument on the rationality of a state implies the reconciliation between individuality and political community through individuals' political participation in common decisions defining a historically situated system of rights. The state is at the same time an instrument in the development of individuals' self-consciousness and an agent in the formation of a common identity supporting this exercise of self-consciousness and leading to morally motivated actions. Though being an ideal construction, this argument on the rationality of an ethical state refers to institutional elements constitutive of political communities nowadays. In great part, this ideal construction refers to the values of freedom and equality and institutional elements, such as democratic procedures and the rule of law, which characterize liberal societies nowadays.

But it is worth pointing out that this ideal construction is not circumscribed in terms of reference and applicability to liberal societies. It is assumed that to fully realize themselves as ethical unities, the states have to comprehend themselves in a relation of mutual recognition with other states so as to test and contest their temporally and spatially contingent interpretations of the morally foundational principles embedded in their system of rights. In a context of socio-economic interdependence, it becomes increasingly necessary for liberal states to be able to openly exchange viewpoints with other liberal states that interpret in different ways the values of freedom and equality as well as with non-liberal ones that question the extent of the significance of these values in the formulation of principles of justice. Openness has here to be comprehended as the

different manners that could be possibly envisaged, including from the formal incorporation of inputs from an international civil society in the actual process of defining international just principles to the development among states' representatives of a moral sensibility that tries to overcome the limitations imposed by a historically contingent notion of reasonableness used during this process, so that states can better grasp each others' particular interpretations of moral principles. It is this openness that allows states, specially liberal ones assuming a leading role in current discussions of international morality, to discover their limitations *qua* ethical units and to use this discovery to agree on a common ground for regulatory principles (international principles of justice) that effectively guarantee the moral integrity of their citizens worldwide.

My embrace of a Neo-Hegelian framework and its development in the directions here suggested will necessarily lead to a series of charges, to which I want here to reply. The first charge is that the link made between ethical states and actual states leads to the endorsement of a "status quo". According to the above reasoning, there is no backing of states just because they are currently available structures. The backing of states is based on the acknowledgement, founded by reasonable argument, that present states possess a rational structure that, to a significant degree, benefit individuals' moral development.²³

The second charge is that the state acquires an absolute status in the analysis, presenting itself as the end of a teleologically historical process. This charge can be certainly dismissed when taking into account the following particularities of a notion of an ethical state. First, it should be remembered that the state is not an end in itself. It is an agent that helps individuals to develop their most elementary moral capacities (independent thinking) in their interactions *qua* political agents, who think together about the construction of a system of rights that lead them to enjoy freedom fully. Second, the notion of an ethical state is historically dependent since its realization is temporally and spatially defined. Hence, states in modern history embody partial, and therefore fallible, views on the fundamentals of an ethical process and should be recognized as such in my

²³M. Hardimon, Hegel's Social Philosophy: The Project of Reconciliation (Cambridge, Cambridge University Press, 1994) pp. 25-26.

analysis.²⁴ It is the qualified recognition of this diversity derived from historical contingency that could eventually pave the way to the construction of more thoughtful, legitimate and viable international just principles.

Second, it should be clear that what my analysis affirms is the continuing ethical significance of states in providing for an environment where individuals can morally flourish. There is no alternative institutional arrangement, considered in the present analysis of theories of justice, which can perform in so comprehensive, coherent and enforceable manner the ethical function here suggested. That does not mean to say that states cannot or will not be replaced by other kind of institutional arrangements in the future. That is a matter of speculation that much depends on the evolution of a historical process and not the object of analysis here.

This last point leads me to consider a third charge brought against the use of a Neo-Hegelian framework, which has two sorts of implications. The possible critiques of this theoretical framework seem always to be internal to a state structure. Thus, it is first quite unlikely to determine whether critique is effective in terms of making institutional changes possible.²⁵ It is possible to answer this kind of criticism by underlining the fact that my analysis refers to the terms by which the state could be recognized as the ethical locus of individuals' moral development and how these terms could lead to a better comprehension of an international society and its foundational principles. Although referring to historical developments, these terms form part of an ideal construction. Present states' structures certainly fail to be fully identified with these terms. That is why there should be a place for criticisms and reforms of states' structures in my theoretical scheme. This space is filled by the conception of institutional mechanisms both at the national and international levels that make possible individuals (either as citizens of a state participating in political decisions or as representatives of a state deliberating about principles of international justice) to develop a certain *openness to otherness*. They are able to exchange viewpoints on the basis of reasonable claims and a moral sensibility so as to evaluate the ethical foundations of the spatially and temporally situated system of

²⁴ In this view, every system of ethical life is transitory and conditioned by the extent to which spirit has reached self-knowledge in that time and place, being challenged by another more comprehensive and developed view. Allen Wood, *Hegel's Ethical Thought*, p. 220.

²⁵ M. Cochran, *Normative Theory in International Relations: A Pragmatic Approach*, p. 107.

rights they form part of and to constitute a common ground for the construction of more inclusive and legitimate international just principles.

Second, it is said that a neo-Hegelian framework ends by imposing constraints on the emergence of new ethical discourses and practices.²⁶ It does not allow a questioning of its foundations that could lead to new forms of thinking or institutional practices. In my interpretation of a Neo-Hegelian framework, it is essential to have this kind of questioning and to make way for new forms of thinking and institutional practices that are part of an increasingly interdependent world. It is by envisaging ways of incorporating the inputs brought by new forms of discourse coming from a lively international civil society and societies that question the liberal values on the basis of different conceptions of the ethical state that it is possible to construct more legitimate and enforceable international regulatory principles.

3. Outline of the Argument

The thesis is divided into two parts. The first part critically reviews the contemporary literature on international justice from a normative perspective. This review is centered on the debate between cosmopolitans and communitarians. With the aim of having a broader understanding of this debate with regard to a functioning moral agent, I address it in terms of universalistic and particularistic claims. That allows me to deal more effectively with the arguments of both communitarians and nationalists on the issue under the same particularistic perspective.

Chapter one discusses Rawls' legacy for the contemporary debates about justice. As it is broadly agreed, Rawls lays the foundation of the contemporary debate on justice with his influential book *A Theory of Justice*. While cosmopolitans tend to enlarge the scope of the Rawlsian individualistic premises to construct a universalistic approach, communitarians and nationalists are inclined to contest them, calling attention to the constitutive role played by community in the development of a functioning moral agent. Arguing from his own viewpoint, Rawls subsequently rejects some of these interpretations and incorporates others in a series of articles on Kantian constructivism

²⁶ M. Hardimon, *Hegel's Social Philosophy: The Project of Reconciliation*, pp.80-81.

and such books as *Political Liberalism* and *The Law of Peoples*. I argue that in these different attempts at re-thinking his own framework Rawls paves the way for a Neo-Hegelian interpretation of the ethical role the state should necessarily play in individuals' moral formation. I further argue that the exploration of this Neo-Hegelian interpretation can eventually lead to a more comprehensive understanding of the terms of interactions among states at the international level.

Chapter two explores the universalistic claims as proposed by cosmopolitans such as Beitz, Pogge and Barry. I argue that these authors have the merit of underlining universal rationality as the fundamental element defining a moral agent. They, however, fail to acknowledge that the actual realization of this capacity is made through individuals' participation in historically situated political structures (systems of rights), which play not merely an instrumental but also a constitutive role in the formation of a motivated moral agent. In so doing, they overlook the fact that, however valid, the liberal view underlying their formulation of egalitarian principles of justice is still historically limited and can only be identified as a guide to moral behavior by a small parcel of the world population nowadays. To attain broader legitimacy and effectiveness, dominant liberal interpretations of international principles of justice have to be continuously reassessed in view of their greater exposure to values and practices underlying different systems of rights in an increasingly interdependent context. It is the possibility of openly exchanging views with a broader range of states so as to have a better grasp of their ethical role in individuals' moral development that paves the way to principles of international justice, characterized by its universal ground and appeal.

Chapter three explores the particularistic claims in the works of communitarians, such as MacIntyre and Walzer, and of nationalists, such as Miller and Tamir. I argue that these authors duly highlight the constitutive ethical role played by historically situated political communities in the formation of motivated moral agents. These authors however fail to sufficiently preserve citizens' ability to engage in independent critical thinking by emphasising the idea that citizens' moral formation is conditional on their common sense of belonging. The discretionary power the political community eventually exerts in the construction of a too subjectively defined collectivity leads to a restrained perception of the ethical role the political community should have in individuals' moral

formation in an increasingly interdependent context, where the status of this community is being continuously challenged. More particularly, the formulation of international principles of justice is above all understood as a way for political communities to acknowledge common institutional practices and values so as to preserve the exercise of their sovereign capacities in the moral formation of their citizens. It is not derived from an open exchange of viewpoints among political communities aiming at a universal agreement on the fundamentals of their citizens' moral development, which could lead them to interact with compatriots as well as with non-compatriots in a morally meaningful way today.

In the second part of the thesis, I present my own version of a Neo-Hegelian approach. The latter aims both at considering the formation of more active thinking and motivated moral agents in their rapports with political communities' institutional structures, as well as at understanding the formulation of international principles of justice from the perspective of these rapports. It is worth pointing out that in the formulation of this version I analyse and incorporate similar arguments as those defended by Habermas, Charvet and Frost on the ethical role played by the state. To a certain extent, I directly benefit from the ideas defended by these authors, endorsing some of the points developed by their analysis. In many ways, however, the ideas are further articulated and lead to novel conclusions that have not previously been drawn.

Chapter four summarises the distinctions between a universalistic and particularistic interpretation of individuals' moral formation through their relation with historically situated political communities as well as the weaknesses of these views. It also presents my understanding of moral agency by underlining a neo-Hegelian conception of individuals' self-understanding through their participation in a juxtaposition of social practices. In doing so, I try to show how my understanding can possibly deal with the shortcomings of the two first characterisations. Though all three versions of moral agency subscribe to an ethical understanding of the relationship between individual and political community, I will distinguish them respectively as functionalist, constitutive and ethical views for the clarity of the argument.

Chapter five characterises the international society as one in which the states emerge by necessity as the fundamental actors because, first, they effectively support,

through the provision of legitimate and enforceable institutional mechanisms, an ethical process born out of individuals' relation with each other *qua* citizens determining a historically situated system of rights. Second, the relations among states as self-determining ethical entities, who are equally open to each others' claim, make possible a cross-examination of ethical experiments across space and over time. Such a cross-examination paves the way to the robustness of international principles of justice. In this distinctive interpretation of a neo-Hegelian framework, I argue that ethical processes are characterised by openness and dynamism derived from their historical attributes and the inter-stated and multicultural dialogues that naturally emerge in a society of states.

In this interpretation, ethical states are ideal constructs that are necessarily embedded in a historical context of interdependence and subject to its challenges. One of states' main challenges in dealing with this context is to understand the significance of clashes between developed societies and non-developed ones as well as between liberal and non-liberal ones, so as to actually achieve the construction of more workable international just principles. Furthermore, I elaborate on how to proceed in view of such an ethical goal, emphasising the inevitable understanding that the actual formulation of principles is an exercise in which state representatives have, for the sake of their states' ethical realisation, to openly exchange viewpoints on their particular interpretations of a system of rights on the basis of a revitalised notion of reasonableness. As I postulate, the key in this notion of reasonableness is the parties' exercise of moral sensibility. Clashes derived from states' differences in levels of development or value systems would then represent a unique opportunity to re-assess the limits of a historically constructed notion of reasonableness that currently shapes the debate on international practices and institutions.

Chapter six analyses the main principles of international justice, projecting the central thesis of chapter five at the institutional level of international society. I argue that the self-determination of its members is the founding principle of international society. That is so because the most basic demand ethical states can make towards each other is related to their right to be recognised in their distinctive capacity of being the collective vehicle of moral self-consciousness to their citizens and to openly relate to each other in this capacity so as to fully grasp the moral foundation of the ethical role they are

supposed to perform. In the present historical context, there are, however, many constraints on the fulfilment of this principle of self-determination, ranging from many states' inability to provide for the basic rights of its citizens to some states' unwillingness to relate to each other in an autonomous way. Given that the international community as a whole has an intrinsic interest in upholding this principle to secure the ethical role its members are supposed to perform in the formation of a fit moral agent, I further argue for complementary principles of justice - associated with the international duties of assistance and intervention. A defence of these duties is further accompanied by an illustrative analysis of the positions held by members of the international community in the Iraq war as well as by a brief consideration of the institutional mechanisms this international society requires in order to render these duties legitimate and effective.

Finally, I draw some conclusions from the arguments defended in the thesis.

The originality of the thesis lies in a re-interpretation of a Neo-Hegelian framework in which states are temporally and spatially situated historical construct that encapsulate in their systems of rights different ethical interpretations of the fundamentals of moral living. In its turn, the society of states becomes, when properly qualified, the locus where distinct ethical interpretations of fundamental individuals rights can be exchanged, assessed and subject to truly universal grounding. Such a qualification is based on states' need to interact in a dynamic and open way, making use of a notion of reasonableness coupled with the exercise of moral sensibility in the actual formulation of international principles. It is eventually this qualification that provides support for more legitimate and effective international principles in an increasingly interdependent world.

CHAPTER 1: Rawls' s Legacy to the Debate

The contemporary debate on International Justice is largely defined around the diverse interpretations of and questions about Rawls' influential book *A Theory of Justice* and his replies to criticism in the articles related to Kantian constructivism as well as his later books *Political Liberalism* and *The Law of Peoples*.²⁷ Broadly speaking, I would say two perspectives have assumed prominence in this debate, universalism and particularism. Their basic distinction can be outlined by the contrasting analysis they offer to the hypothetical situation (Original Position- OP) that Rawls constructs to discuss the basic principles of justice that should govern a society. For universalists, such as Beitz and Pogge, there is nothing specifically in the characterization of the parties and the circumstances they are subjected to that constitute a constraint on thinking about terms of justice worldwide.²⁸ Individuals share an intrinsic common capacity to reason about moral issues that make their social, cultural and economic differences (particularities of space and time) irrelevant to the construction of basic international principles of justice. Principles of justice do assume in this perspective a universal form, being universally justified by individuals living all over the globe. It also assumes a cosmopolitan scope of application, valid for each and every individual independent of the context they find themselves in.²⁹

²⁷John Rawls, *A Theory of Justice*; John Rawls, *Political Liberalism*, (New York, Columbia University Press, 1996) and John Rawls, *The Law of Peoples*, (London, Harvard University Press, 1999). Concerning the articles working with the idea of Kantian Constructivism, see John Rawls, "The Basic Structure as Subject" in *American Political Quarterly*, Vol. 14, No.2, April 1977; John Rawls, "Kantian Constructivism in Moral Theory", *The Journal of Philosophy*, Vol. LXXVII, NO. 9, September 1980; John Rawls., "The Basic Liberties and Their Priorities", *The Tanner Lectures on Human Values*, Delivered at the University of Michigan, April 10, 1981.

²⁸Charles Beitz, *Political Theory and International Relations* and Thomas Pogge, *Realizing Rawls*.

²⁹In terms of a more comprehensive discussion about the form and scope of of universalists see Onora O'Neill, *Faces of Hunger: An Essay on Poverty, Justice and Development* (London, George Allen and Unwin, 1983), chapter 3 and Onora O'Neill, *Towards Justice and Virtue: A Constructive Account of Practical Reasoning* (Cambridge, Cambridge University Press, 1998), chapters 2, 3 and 4. She develops arguments on the focus and scope of practical reasoning so as to support universality.

For particularism, represented by communitarians such as Taylor and Sandel, the Rawlsian construction of an OP in order to derive just principles seems misplaced.³⁰ By focusing on procedures, it wrongly portrays the individual as a self who exists prior to his ends. Individuals cannot reason without having as a reference the social environment in which they grow up, which helps define who they are and what they want. It is in a social context that things and actions gain meaning and significance. The individuals' moral judgments will therefore be strongly influenced by the way the community forms and defends values that define social roles. To talk about justice is to talk about the importance of these values and to what extent they contribute to the maintenance of a specific social structure.³¹ As the primacy of the community over the individual becomes evident here, international just principles tend to assume a thin universal form, mainly related to the common set of values grounding the different social systems. They also tend to have a restricted scope of application given the fact that general principles should be considered against communities' particular claims on the need to keep social unity.

From a Rawlsian perspective, the particularists' criticisms call due attention back to the role exercised by community in the formation of a moral agent but their claims are quite overemphasized. In many ways, they misread the main concern behind the construction of an OP. In the first set of replies, Rawls attempts not only to reiterate the social dimension present in *A Theory of Justice* but also to qualify his enterprise, supposing a much more limited scope (modern democracies such as USA) while

³⁰ I will look more closely at the implications of these criticisms at the international level in the works of communitarians like Walzer and McIntyre as well as nationalists such as Miller and Tamir in chapter 3.

³¹ There are different interpretations of practical reasoning. For the universalists, an individuals' distinctive characteristic involves the capacity for critical reflection. They are able, to some extent, to put a distance between themselves and the community, that means, to evaluate in a critical way the standards and values that are established and maintained by the society. Although the social environment, where autonomy is praised in a smaller or larger sense, is important to the development of these individuals' capacity, it is never conceived as a determinant or an active element. It is only instrumental to individuals' realisation of their inner capacities. The moral agent is primarily the individual, understood in his universal nature. The particularists criticise this perspective on the basis that practical reasoning is grounded in the values and goods that are specified by the community. Reasoning is an activity that can only be apprehended by living in a particular context that gives you the standards to evaluate actions. The individual's capacity for reflection is framed by the environment he lives in. In other words, the embedded character of the individual takes precedence over his capacity for reasoning. Given this assumption, the notion of moral agent tends to assume an ambiguous character. While the individual could still be seen as the focus of morality, his attitudes and thoughts are determined by the values defended by the community. Since this determinant role is assumed to be unquestionable, the community could be regarded as a kind of "moral entity" in international relations.

preserving the analysis' moral reach. Based on the notion of Kantian constructivism, he implicitly admits that though individuals are partially embedded selves, they supposedly can, if not transcend the restraints imposed by the historical context they live in, exercise their autonomous capacity for thinking by questioning these same constraints when confronting their own embeddedness with other embedded selves. As a consequence of this supposition on the individuals' intrinsic ability to exercise their autonomous thinking capacities, Rawls leaves open the way to the construction of far-reaching just principles.³²

The kind of response outlined by Rawls signals the possibility of understanding in a more harmonized way the relationship between individual and community in the deliberation of just principles. In the following pages, I try to explore this view by arguing that some elements of his explanation of Kantian constructivism as well as some ideas contained in *A Theory of Justice* and in his later books could ground an ethical interpretation of the role exercised by the community in the constitution of a thinking moral agent capable of legitimising and actively supporting more encompassing international principles of justice. I admit that from the reading of *Political Liberalism* and further on of *The Law of Peoples*, Rawls is not willing to embark on this kind of interpretation full heartedly. I would say he opts for a more constricted understanding of the purpose of the agreement under OP. His analysis emphasises a politically situated notion of the individual that implies but does not carefully explore the notion of a moral agent and the general social conditions necessary to his development. By doing that, it leads to an impoverished understanding of the possibilities of an international just agreement.

Particularly, my aim in the present chapter is to trace the diffused ethical role that could be assigned to the community in Rawls' thoughts, articulating the challenges presented by particularists and universalists as well as Rawls' replies to these challenges. In doing so, I intend to introduce some of the main points that will lead to the construction of my own ethical version of an international agreement on just principles, developed in the second half of the thesis. The chapter will be divided into four parts. First, I analyse the construction of the OP as proposed by Rawls and further look for how

³² While the stress on abstraction leads to philosophy, the emphasis given to the understanding of situated issues in detriment to the formulation of more general theories, leads to political science.

universalists will tend to explore this framework to their advantage. Second, I discuss the problems facing Rawls' enterprise taking into account the particularist critique as well as his answers to the particularists' challenge. Third, I look for the possibilities of assigning an ethical dimension to Rawls' enterprise and the limits of doing so. Finally, I present some conclusive remarks on the subject.

1.1) The Construction of the Original Position (OP) and the Path to Universalism

As it is well known, the OP is a hypothetical situation in which the abstract representation of the parties (individuals) and the circumstances surrounding them serves to the building up of a desirable criterion for the establishment of principles of justice. It can be regarded basically as a philosophical construction responsible for helping to rethink the basic structure of society, the ensemble of rights and duties that individuals have in relation to each other as well as the distribution of economic advantages that sustains the framework of rights and duties.

In the OP's construction, Rawls uses the method of "reflective equilibrium", a dynamic exercise involving both common sense and theoretical presuppositions. The exercise is supposed to reflect an ongoing struggle to find the best possible balance between individuals' considered judgements about justice derived from our moral intuitions and theoretical premises and reasonable philosophical explanations that could be possibly offered for these common beliefs.³³ In this sense, it involves the ability to go back and forward between the observation of shared moral convictions present in a social milieu and the possibilities of explaining these convictions, giving them not only coherence but making them intelligible and defensible to a wide audience. Individuals could eventually both access the reasons why some maxims could guide actions and form

³³ Concerning the conception of "reflective equilibrium", see Rawls, *A Theory of Justice*, p.2. It is worth noting that there is here a supposition that premises will not only tend to expose in a concise and logical way the pre-judgements that already make part of a specific context instead of acting as an instrument that actually serves to evaluate the various possibilities of justice without being determined by historically contingent factors. Taking into account Fisk's terminology, they will assume an important analytical function but will fail in realising its distinctive critical potentiality. See M. Fisk., "History and Reason in Rawls' Moral Theory" in Norman Daniels, ed., *Reading Rawls: Critical Studies on Rawls' A Theory of Justice*, (Oxford, Basil Blackwell Publisher Limited 1983), pp. 54-55. A good explanation of this method is also offered by Thomas Scanlon, "The Aims and Authority of Moral Theory", *Oxford Journal of Legal Studies*, Vol. 12, No. 01, 1992, p. 02.

good reasons to apply them in practice despite all the constraints they face in their day to day life.

It should be reiterated here that though Rawls makes use of observation as part of his method, he is fundamentally working with a hypothetical situation that does not exist and, most probably, will never exist in practical terms. It is a construction involving abstract characterisations of the parties of an agreement and the circumstances they face so as to help determine how far or how near we are from “our highest expectations” in terms of justice. It works out just principles that would characterise a well-ordered society under favourable circumstances. It therefore presupposes that compliance is not an issue since principles will be applied to a society effectively regulated by a public conception of justice and where its members recognise themselves as full moral persons³⁴.

The way Rawls makes use of the *reflective equilibrium* method becomes clear in the incorporation of the notions of rationality and reasonableness in the construction of the parties and the constraints they face in the OP. Rationality and reasonableness are to be regarded as intrinsically interconnected and essential to delineate the nature of the moral agent, particularly the background elements that make part of his practical reasoning in the definition of principles of justice³⁵. Broadly speaking, the parties are to be understood as rational in the following way. They should be seen as self-interested parties, ready to advance their own different interests and viewpoints. They are able not only to define their good but also to take effective means to ends with a clear understanding of their unified expectations and objective probabilities to attain their goals. This perception of a self-interested individual leads to a particular interpretation of the individual’s autonomy. Human beings are seen as free choosers in the sense that they can set goals for themselves without being required to apply any prior or antecedent principle of right and justice³⁶. Public order is to be derived from a perception of their

³⁴ This point is important because it should be clear that I am not interested here in the issue of political stability in Rawls, linked to the implementation of principles of justice in less favourable conditions, which will be a subject developed in the second and, mainly, in the third part of *A Theory of Justice*. My aim is to analyse the general presuppositions that lead to the construction of principles of justice.

³⁵ John Rawls, “Kantian Constructivism in Moral Theory”, *The Journal of Philosophy*, Vol. LXXVII, No. 9, September 1980, p. 532.

³⁶ John Rawls, “The Basic Liberties and their Priority”, *The Tanner Lectures on Human Values*, Delivered at the University of Michigan, April 10, 1981, p. 21.

common basic necessities and the understanding that it is an effective means to attain their different goals.

In order to be able to establish a sustainable agreement in the long term, individuals' rational character has nonetheless to be constrained. Such a need basically derives from the fact that an agreement with no imposed restrictions on the rationality of its parties will be seen merely as mutually advantageous by someone who, lacking absolute and unchallenged power, settles for a consensus. This perception would bring fundamental problems to the existence of an agreement. First, in a context where there is a lack of equal powers among individuals, justice will end up being the arbitrary imposition of the interests of the most powerful part - measured by their ability to make use of the greatest amount of resources at their disposal³⁷. Second, even if an agreement could be reached among equally situated parties, there would always be the problem of the fragility of compliance given the instrumentality of the agreement. Taking into account the Hobbesian dilemma, an agreement will not be sustained, or reach stability, if individuals regard it as a mere instrument to pursue their narrow interests because there will always be incentives to override it.^{38 39}

To limit the effects of self-interested rationality in individual's practical reasoning, Rawls introduces some new concepts in his analysis. First, he argues for individuals' mutual disinterest, they are not interested in each other's interests and are not motivated by envy. They are basically striving for absolute gains, rejecting any competitive relationship based on comparative advantage. Second, and more importantly from a moral viewpoint, Rawls introduces the notion of sociability and its effects in the formation of human personality. He assumes that individuals are co-operative agents in the following terms. They have the ability to associate with each other and they need social contact to develop some essential human capacities, such as to speak and to think,

³⁷ In relation to the negative effects of an unequal distribution of power among contractors, see Will Kymlicka, "The Social Contract Tradition" in Peter Singer, ed., A Companion to Ethics (Oxford, Blackwell Publishers, 1994), p. 190.

³⁸ A good interpretation of Hobbes argument and its potential failure is developed by Jean Hampton., Hobbes and the Social Contract Tradition (Cambridge, Cambridge University Press, 1995).

³⁹ The free-riding problem can, someone would plausibly defend, be partly solved by the reinstatement of a hegemonic power. This solution, however, can reinforce the notion of fragility in terms of the volatility of the terms of the agreement. Once the balance of power changes, the principles can be radically reshaped in terms of the new standards established by the most powerful one.

and to obtain the benefits of economic efficiency. They also derive satisfaction from the presence and the realisation of other individuals' excellences, seen here as compatible with the pursuit of their own particular goods. In this sense, they share a sense of being part of a common enterprise that is valued for itself⁴⁰. Besides that, individuals should be seen as continuing persons, able to form meaningful ties with the members of the next generations⁴¹. They care about the future lives of other members of society and should choose just principles taking into account their possible effects and the inconveniences on the development of these persons.

It is clear that the notion of sociability introduced by Rawls hints at the notion of a moral person that takes into account others as sources of valid claims but it is still insufficiently spelt out to curb the effects of a self-interested rationality in moral issues. That happens because the characterisation of sociability as suggested here by Rawls seems to imply reciprocity in the sense that one cares about another person's project because one wants to be respected when pursuing one's own activities and because the other person's projects can contribute to the overall success of one's enterprise or society's enterprise. But it does not necessarily spell out the idea that we should care about all individuals in equal terms or that we perceive the intrinsic value of their existence, independently of any consideration about the attainment of our own good. Even the supposition of intergenerational links does not seem to add too much to the formation of a moral character in which individuals' equal exercise of autonomy becomes essential. There would always be the possibility that individuals disregard the fact that persons outside their closest social circle, for example defined by family ties, could have similar rights to pursue their claims.

A more encompassing attempt to deal with the undesired effects of rationality on the agreement formation is given by Rawls when introducing *the veil of ignorance*, the conditions attached to the contract and the further attribution to the individual of a formal sense of justice. In spite of having a general (theoretical) knowledge about the social and political organisation of humankind under the veil, individuals have no specific

⁴⁰ As Rawls says "... human beings have in fact shared final ends and they value their common institutions and activities as good in themselves. We need one another as partners in ways of life that are engaged in for their own sake and the success and enjoyments of others are necessary for and compatible to our own good"., John Rawls, A Theory of Justice, p. 522.

⁴¹ Ibid, p. 206.

information about which society they belong to – its level of civilisation or economic development. They also have no knowledge about their place in society, their socio-economic status, the generation they belong to or their natural skills and deficiencies⁴². This poor level of particular or situated knowledge equally imputed to individuals tends to introduce a condition of fairness among the contractors, eliminating the possibility that they take biased decisions in the choice of principles. Deprived of advancing their goods with a full knowledge about who they actually are and how they will fare in society, individuals are obliged to consider all the possibilities, inclusively taking into account as valid the claims of the worst off in society

Although the veil makes irrelevant the particularities that give individuals their sense of identity (who they really are) and meaning to their actions, Rawls preserves some possibility of diversity among them by assuming that they in principle have different levels of desire concerning primary goods. These goods concern rights, liberties, opportunities and powers, income and welfare that will ultimately enable them to realise their actual interests when they get to know their full identity.⁴³ In what concerns the just principles, each individual will attach less or more importance to the pursuit of these goods. This understanding of differentiation has been however harshly criticised by both communitarians and cosmopolitans as I will demonstrate further on, mainly because it tends to disregard the issue of individuals' identity. Something more should be said about individuals' inner capacities, beliefs and attachments otherwise the requirements imposed by *the veil* could be regarded as too demanding, or even idealistic, considering the fact that individuals are obliged to abide by a contract without knowing anything about its direct implications for their life.⁴⁴

In terms of circumstantial devices, the quest for fairness is further on reinforced by the conditions attached to the contract itself. Principles of justice should apply to the

⁴² *Ibid.*, p. 137.

⁴³ For a more detailed explanation of primary goods, *Ibid.*, chapter 3.

⁴⁴ In a radical perspective the lack of differentiation leads to the implication that the decision concerning just principles can be made from the viewpoint of a unique rational individual and, consequently, the contract can be seen as a redundant device. Thomas Scanlon., "Contractualism and Utilitarianism" in Amartya Sen & B. Williams, eds., *Utilitarianism and Beyond* (Cambridge, Cambridge University Press, 1982), p. 125. The same kind of argument is put forward by Barry when considering Hart's criticisms of Rawlsian theoretical approach. See also Brian Barry, *Justice as Impartiality* (Oxford, Oxford University Press, 1995), p. 58.

basic structure of society and, therefore, should be chosen taking into account: 1) its generality (it expresses general properties and relations); 2) universality (it must hold for everyone in virtue of their being moral persons); 3) finality (it should be seen as the final court of appeal in practical reasoning) and order (they must impose an ordering in conflict claims); 4) publicity (everyone accepts and knows that the others likewise accept the same principles, and this knowledge in turn is publicly recognised).⁴⁵

Given that the attachment of fairness to mere circumstantial devices will probably constitute a problem after agreement is reached, Rawls attributes a sense of justice to the parties. Each party knows that it can understand and act in accordance with principles of justice that regulate a well-ordered society once they are chosen. Moreover, each one can suppose that the other members of society will tend to adopt the same kind of attitude⁴⁶. The implications of this argument are clear. Given the fact that the principles of justice represent fair terms of social co-operation, the author is implicitly assuming that individuals are able to act on a moral basis, which puts restrictions on their persecution of narrow interests based on rational considerations. Individuals are not only characterised by their rationality but also by their tendency to act morally – admitting the worth of human beings as the source of valid claims.

The generalisation implied in the description of the parties (individuals' ability to rationally form and pursue a goal as well as their sense of justice) and the circumstances surrounding them serve a specific purpose in Rawls' scheme. It paves the way for a conception of procedural justice. What is just is determined by a fair procedure and not by any independent criterion that defines what the right outcome is. The correctness of a distribution of rights and economic benefits is grounded on the justice of the structure of co-operation, derived from the claims of rational individuals fairly situated⁴⁷. A broad implication of such an argument is that individuals form a consensus about the

⁴⁵ It is worth noting that the publicity aspect is not merely a formal or simple external condition. It is expanded in order to involve the supposition of general beliefs in the light of which common principles are accepted – it involves justification. People should reason in the light of these common beliefs (theory of human nature and of social institutions generally) that are present in a well-ordered society. By the same token, the universality condition can be interpreted as a pre-disposition to see individuals as having a moral capacity that is dependent on the idea of *the veil* and on an assumption about the essence of human nature, emphasising the equal worth of individuals.

⁴⁶ John Rawls, *A Theory of Justice*, p. 337.

⁴⁷ Chandran Kukathas & Philip Pettit, *Rawls: A Theory of Justice and its Critics* (Cambridge, Polity Press, 1990), pp. 66-67.

procedures that are to regulate the relationship among individuals and legitimate political decisions. Although individuals can have different opinions concerning the desirability or validity of particular outcomes (public policies), they cannot dispute their authoritative character. This implication embodies a particular understanding of the formation of individual's good. Individuals can have different opinions or conceptions of what is the good life. However, the perception about their particular good should be in consonance with a broader conception of themselves – to see each other as free and equal so they can establish and sustain fair public relations.

The unity of individuals' practical reasoning, determined by the subordination of rationality to the conditions of reasonableness, will finally lead them to follow a maxim strategy⁴⁸ and agree on two principles. The first principle underlines the absolute priority of personal liberties. The second one states the priority of justice (deprivation) over efficiency. It includes equality of opportunity and the insurance that social and economic inequalities are arranged to offer the greatest possible benefits to the worst-off in society.

I would say that Rawls' understanding of universality is closely related to the way his procedural deliberation is set. At first glance, the generality of the features provided by him in terms of the parties' nature and the circumstances surrounding the deliberation could lead to a quite universalizable view on principles of justice. Individuals' social dimension is here to be perceived as an added variable, clearly supporting a notion of reasonableness but not determining the outcome of the contract. But in a closer look it has to be said that much of what is to be perceived as reasonable by him is still grounded on moral convictions about how best to develop the human essence, which individuals share as part of a specific social whole. Following this perspective, the limits to the universality of international principles are related to the perception that intelligibility is not necessarily universally given. Universality maybe has to be constructed through

⁴⁸ This strategy is characterised by choice under conditions of uncertainty. Individuals will tend to choose an option that maximises their gains while minimising their losses. The assumption that an individual is necessarily risk-averse has been much criticised by other authors, mainly because this assumption is not presupposed under the conditions imposed by *the veil*. The author expressly admits that individuals have no judgements about risks. A more detailed discussion about this issue and its implications, Brian Barry, The Liberal Theory of Justice: A Critical Examination of the Principal Doctrines in *A Theory of Justice* by John Rawls (Oxford, Clarendon Press, 1973), p. 116.

dialogue between parts that either share the same values sustaining the conception of reasonableness – freedom and equality - or are willing to share these values since they understand the comparative advantages (reasons why) of the employment of these conceptions.

Considering these limitations, international justice will be seen mainly as an issue of compliance for Rawls, related to no ideal theory. His second OP, in which the representatives of individuals (peoples), who see themselves as free and equal deliberate about international principles, translates to a broader sphere the principles already delineated in the first OP. Societies that live under unfavourable conditions, not disposing of the historical, social and economic means to constitute themselves as a well-ordered regime are supposed to receive positive incentives (duty of assistance) from other societies to become full members of the Law of Peoples. And societies considered outlaw states because they refuse *a priori* to comply with reasonable principles have to be convinced of the values of freedom and equality to human beings' existence by means of co-operative efforts, even if they consider these efforts a question of *modus vivendi* at first.⁴⁹

Universalists who have directly engaged in a dialogue with Rawls have tried to some extent to reinforce the individualistic approach seen in the Rawlsian scheme by attributing an instrumental role to the community in the formation of individuals. For them, there is no need to go on to a second OP. It could be argued that though society is significant in the development of individuals' reasoning abilities and their sense of identity, it is not of ultimate moral relevance. In moral matters, the focus tends to be on individuals' potential universal rationality and their ability to argue on reasonable grounds, which are *a priori* considered to be potentially present worldwide (the world taken as a social co-operation scheme) and to be centred on values that are the most propitious for the flourishing of thinking agents.

Behind this defence, there is a supposition that it is the individual who is the predominant moral agent in the formation of international principles of justice, despite its links with specific communal obligations or attachments. The individual is taken to be prior to the community in the sense that political communities should have their existence

⁴⁹ John Rawls, The Law of Peoples (London, Harvard University Press, 1999), p. 05.

justified in terms of the will and the perceived needs of their members. The individual can easily disentangle himself from his communal links, or specific contexts in which he lives, and identify with values and beliefs that are not only created in a global dynamics but also taken to be representative of the best way available to realise his human nature.

Currently, this interpretation of Rawls' scheme is exemplified by authors such as Beitz and Pogge who visualise the possibility of applying the conditions of OP at the world level. As I will show in chapter 2, they will defend the idea that the information concerning political, economic and social matters would be so generic under *the veil* that they cannot be attached to any specific social milieu. Following this reasoning national identity can be understood as a further contingency that should not influence the choice of just principles⁵⁰. When thinking international principles of justice, we should be putting the individuals' identity in a global scale as more important than their national or particular attachments seen here as a subordinated item or an issue of second-order concern.

This way of reading the conditions expressed by Rawls in the OP is further complemented by a defence of the idea that economic and financial interdependence in the world today are so widespread that it enables us to think about individuals as generally part of a common politically organised social milieu where freedom and equality are preserved and valued. In this perspective, the individual is not morally bounded by any specific communal links. His essential identity is expressed in the dominant values existing at a global level and is accessible by a form of reasoning that suffers no determinant constraints from the fact that he is also a member of a particular political community. As Beitz proclaims: "...if evidence of global economic and political interdependence shows the existence of a global scheme of social cooperation, we should not view national boundaries as having fundamental moral significance."⁵¹

Before proceeding to the next section, it is worth noting that the contemporary claims of universalists have gone beyond the direct extrapolation of Rawls's claims on the first OP to the international sphere. An illustration is provided in chapter 2 with

⁵⁰ Pogge makes explicit use of this argument to advance his claims about global justice. Thomas Pogge, *Realizing Rawls*, p. 247.

⁵¹ Charles Beitz, "Justice and International Relations" in Charles Beitz & alli, eds., *International Ethics*, p. 298.

Barry's attempt to overcome what is to be perceived as two of the main weaknesses of the Rawlsian basic framework, the construction of the parties' identity and their moral motivation, by relying on Scanlonian premises. For him, international principles are to be based on the outcome of an ideal situation where individuals, who know who they are and where they come from, are willing to argue on the basis that no one could reasonably reject. To some extent, he will be able to take the claims of universalists one step further by re-emphasizing the commitment to far-reaching just principles while making some concessions to the particular attachments individuals have to their social milieu.⁵²

1.2) Problems facing the OP's Construction: the Particularist Critique and Rawls' Counter-argument

The particularists' critique is focused mainly on the notion of the individual that Rawls' conception of procedural justice sustains. For them, no matter how Rawls makes use of theoretical devices (*the veil of ignorance*) to reinforce the idea of impartiality, his scheme is still based on a rather specific understanding of individuals' nature and how they should act in the public sphere. It defends a vision of individuals as equally valid sources of independent claims that are formed in liberal democratic societies. And in this respect, it should be acknowledged that the community plays a constitutive role as the entity capable of sustaining the specific kind of environment where such individuals can flourish, helping them not only to exercise their reasoning capacities by providing a reliable environment where they can interact but also to delineate the limits of this exercise by offering them a sense of belonging (common identity). Moral thinking is therefore closely linked to individuals' common experiences and, more importantly, the social meanings that are attached to these experiences in a specific socio-political milieu.

⁵² I come back to this point in chapter 3, where I discuss Barry's framework in the second part.

Sandel and Taylor exemplify the point.⁵³ For Sandel, Rawls' OP presupposes a capacity individuals do not have: the capacity to choose or construct moral principles without self-knowledge or, indeed, without the necessary moral experience that is dependent on the existence of a community. Sandel calls attention to the fact that it is incoherent to presuppose that individuals can choose principles before knowing their identities. In order to do so, we have to admit that individuals are natural choosers of their ends and disregard the fact that what they choose much depends on what kind of social milieu they grow up in. The social milieu, with the specification of what roles individuals should perform and what kind of interaction makes sense in the performance of these roles, provides in fact the meaning to their choices and offers them the moral experience necessary to deliberate on public issues.

Considering this point, individuals are to be seen as intrinsically constituted by their community's values that can only be acknowledged and not in fact chosen in the deliberation of just principles. That is so because the emphasis on moral practices that strongly presuppose intersubjective conceptions of the self (social roles) and values leads to the identification of the aim of moral reasoning as self-understanding rather than critical judgement. In this case, individual's ability to reflect or to take decisions on moral issues could never be completely guaranteed outside the limits imposed by the community itself.⁵⁴

Taylor expresses similar kinds of communitarian concern from a somewhat differentiated perspective, accusing the liberals of not taking seriously the issue of social intersubjectivity (human sociability) encompassed on the definition of individuals' choices and their motivation to act. For him, liberals, such as Rawls, wrongly portray an atomistic view of the individual when emphasising the priority of individuals' right over society. They conceive individuals as being by nature free and holders of particular

⁵³In the discussion of the arguments constructed by Taylor and Sandel, my main intention is to clarify the arguments presented by Rawls but subjected to my interpretation. In this sense, this discussion does not aim to be a detailed analysis of the implications of the theoretical premises defended by these authors. A good overview of the main communitarian criticisms is presented by Will Kymlicka, "Liberalism and Communitarianism", Canadian Journal of Philosophy, Vol. 18, No. 2, June 1988 and A. Buchanan, "Assessing the Communitarian Critique of Liberalism", Ethics 99, July 1989.

⁵⁴ See Michael Sandel, "The Procedural Republic and the Unencumbered Self" in Shlomo Avineri & Avner de-Shalit, Communitarianism and Individualism (Oxford, Oxford University Press, 1996), p. 12. For a more detailed criticism of the Rawlsian theoretical premises, see Michael Sandel, Liberalism and the Limits of Justice (Cambridge, Cambridge University Press 1998), chapter 2, pp. 16-19.

rights, most importantly the right to live and dispose of their properties. All kind of political obligation should therefore be seen as derivative and conditional, dependent on the absolute observance of individuals' natural rights. But this reasoning disregards the fact that "to have a right" is to present a moral claim against the interference of other persons that affects the manifestation of my capacities, such as the ability to choose or to lead a rational way of life. And these capacities can only be developed when considering the existence of a communal environment, able to establish the standards by which individuals can evaluate their choices.⁵⁵

The determinant role played by the community in the definition of who we are and what kind of decisions we can valuably take, tends to lead to a restrained view of universality. The following implications can be imputed to this view: 1) the terms of interaction among societies to establish agreement should be restricted as societies are sovereign entities that have broad capacity for defining individuals' sense of identity through assignment of social roles; 2) any consensus has to give way to the priority attached to the construction of communal identities. Thin principles of international justice, governed largely by what is common practice among the communities, seem the most likely result in the face of these issues. Even if more encompassing principles could eventually be agreed on, they would be subjected to communities' right to preserve the specific values, and the eventual interpretations of them, on which social cohesion rests.⁵⁶

Taking the perspective of TJ, Rawls can answer some of the particularists' attack by re-emphasising the reason why he wants to go through an OP construction to think about an agreement. It seems that his intention is not to deny individuals' social dimension and their capacity to influence the set of choices available. In fact, he seems to underline this point all through his analysis either when setting the circumstantial conditions of the OP or characterising the parties. When setting the circumstantial conditions, he presupposes that individuals have a general knowledge of the beliefs

⁵⁵Charles Taylor, "Atomism" in Shlomo Avineri & Avner de-Shalit, Communitarianism and Individualism, p. 29.

⁵⁶The characterisation of the particularists' claims made above is very general and sometimes can be regarded as closer at a stereotype of the perspective. I intend to look closer to the particularist claims in chapter 4 where I analyse how the communitarian claims of Walzer and McIntyre as well as the nationalistic presuppositions of Miller and Tamir affect the development of moral agents' reflective capacities and their exercise in the construction of principles of justice.

prevailing in a public culture of a well-ordered society.⁵⁷ When characterizing the parties, he presupposes that individuals' sense of justice is constructed as participant of a well-ordered society, where the equal claims of independent agents are seriously considered. The main point for Rawls is that he wants to use the contract to put into question the beliefs constructed in a public culture of a well-ordered society, finding reasonable arguments to defend or to contest them. And in this sense, he has to disagree with the narrowness of a communitarian critique.

I specify my point. First, the emphasis given to the individual in the OP as someone able to set and perceive his main goals, interpreted by Sandel as a defence of a person who is prior to his ends, does not imply a rejection of the fact that the social milieu helps develop his inner abilities. It should be regarded much more as a cautious note indicating that a capacity to be reflective in a critical way is intrinsic to the individual's nature, whether he develops it or not. In this sense, there is nothing that should be seen as unchallengeable or completely deterministic. The standards created by the community, and the values embodied in them, can always be discussed and re-examined⁵⁸. Second, the defence of a thin theory of the good (primary goods) to preserve individuals' particular set of choices has a purpose. It seems to dismiss any possibility of seeing the community dictating the ends to be attained by individuals. Liberty and self-respect, seen as primary goods, are not pursued as a final end but as a pre-condition for the attainment of meaningful projects, ultimately defined by each individual according to his disposition.

Following this path of reasoning, I would say that there is no assumption in the presentation of the Rawlsian theoretical scheme that the individual can be conceived apart from the community. The parties to the agreement in the OP are not only characterised by their rationality but also by their sociability that shapes the use of their rational capacities. In this sense, the rationality involved in the contract (definition of rights) does not exist in a vacuum. Even if individuals are subjected to *the veil of ignorance*, they still have a general idea about a social environment politically regulated

⁵⁷ This presupposition refers more specifically to the publicity condition of the contract. See John Rawls, *A Theory of Justice*, p.454.

⁵⁸ A similar kind of argument seems to be sustained by Will Kymlicka,, "The Social Contract Tradition" in Peter Singer, *A Companion to Ethics*, p. 190 and Allen Buchanan, "Assessing the Communitarian Critique of Liberalism", *Ethics* 99, July 1989, pp. 858-862.

where the idea of right emerges and sustains the development of their inner capacities (including rationality). If individuals' right is underlined here it is because it is generally understood that nothing is "authoritative" before their autonomous judgement.

The points I have made in Rawls' defence cannot however dismiss an important objection made by the particularists. The role the community plays in individuals' moral experience (the social character of this experience - the social bond that is formed among the members and the way it influences the use of critical capacities) and supports a motivation to act reciprocally in an autonomous way is not seriously discussed.⁵⁹ It is at best taken for granted. Looking from this perspective, Rawls has still to be able to offer a more systematic answer to this key challenge posed by communitarians, one that offers more than bits on individuals' structure of choices behind a theoretical device.

Rawls attempts to do this in the later set of articles that offer his concept of Kantian constructivism.⁶⁰ The Rawlsian arguments presented around this concept try to formulate an alternative to the Kantian dilemma and thus to give a consistent account of the relationship between intelligibility and applicability.⁶¹ He will do so by offering a potential defence of individuals as natural choosers without recourse to metaphysics or a completely disembodied subject. The reconciliation of the individual with his social dimension is expressed in the OP, seen as a construction that helps to define what is

⁵⁹ See Michael Walzer, "The Communitarian Critique of Liberalism". Political Theory, Vol. 18, No. 1, February 1990. He stresses the fragmentation, and consequently the instability, of a liberal society always based on voluntary associations (marked by the right of rupture and withdrawal).

⁶⁰ John Rawls, "Kantian Constructivism in Moral Theory", The Journal of Philosophy, p. 517.

⁶¹ Kant's moral principles are based on a metaphysical conception of the person, seen as someone who possesses and applies to his actions a rationality that is regarded as universal and independent of contingent influences (*a priori* knowledge). Although this metaphysical conception brings consistency to his arguments since it clarifies the issue of how the principles become intelligible, it also becomes a constraint when discussing the issue of applicability because it tends to neglect the significance of historical context in the individuals actual use of his reasoning capacities. This problem is exemplified in his analysis of the compatibility between individual freedom and coercion. This compatibility is based on the ideal relationship between morality (seen as the theoretical branch of right) and politics (the applicable form of the right). But in the real world, this compatibility can never be fully attained given the imperfection of human nature and the environmental constraints it is obliged to face. Concerning the discussion about freedom and coercion in Kant, see Immanuel Kant, "The Metaphysics of Morals" in Hans Reiss, Kant's Political Writings (Cambridge, Cambridge University Press, 1996), p. 134 and Immanuel Kant, "Perpetual Peace: A Philosophical Sketch" in Hans Reiss, Kant: Political Writings, p. 116.

justice for us in virtue of how we (modern liberal democratic polities, more precisely the American society) conceive of persons.⁶²

It is a Kantian procedure so far as the justification of principles does not depend on any particular conception of human nature or behaviour but on an account of the person as moral agent and his powers. In the case of the Rawlsian framework, this agent has basically a conception of the good and a sense of justice and is moved by the two highest order interests in realizing and exercising these powers.

But contrary to the Kantian individualistic position expressed in the Categorical Imperative, he admits that the description of a moral person will vary from one society to another, although it is American society on which Rawls focuses. By the same token he also assumes that the reasonable (condition of fairness) that constrains the rational and is the foundation to the construction of ethical principles is not related to the public in its universal form but to the public seen as fellow citizens living in a bounded community (well-ordered society). That is why just principles are to be seen as a construction of human agents who regard themselves as members of a well-ordered society or who are able to share the values of this society. That is also why they are to be seen as justifiable in the sense that reasons for action can be provided to this kind of audience.⁶³

From my perspective, what is important to underline is the fact that in his explanation of Kantian constructivism Rawls is implicitly admitting that the development of a moral individual is dependent on the way he relates to the public. It is as autonomous citizens that individuals should address each other in order to think about just principles. Autonomous citizens are in this sense to be seen as expressions of moral persons.⁶⁴ When pressing the argument a little further towards an ethical interpretation, I would assume that eventually one essential step in becoming a moral agent is individuals'

⁶² The perception that Rawls is trying to establish a dialogue with Kant is supported not only by the author himself but also by some of his critics who will analyse the implications for his framework. See John Rawls, A Theory of Justice, p. 251. Concerning the implications of Kantian Constructivism to the construction of just principles in a Rawlsian framework, see particularly Michael Sandel, Liberalism and the Limits of Justice (Cambridge, Cambridge University Press, 1998), pp. 14-24 and Will Kymlicka, "Liberalism and Communitarians", Canadian Journal of Philosophy, p. 201 and Onora O'Neill, "Constructivism in Rawls and Kant" in S. FREEMAN, ed., The Cambridge Companion to Rawls (Cambridge, Cambridge University Press, 2003), pp. 347-367.

⁶³ Chandran Kukathas & Philip Pettit, Rawls: A Theory of Justice and its Critics, pp. 125-127. For the way Rawls build his notion of Kantian constructivism see also O'NEILL, O., "Constructivism in Rawls and Kant" in S. FREEMAN, ed., The Cambridge Companion to Rawls, pp.347-363.

⁶⁴ John Rawls, "Kantian Constructivism in Moral Theory", The Journal of Philosophy, p. 532.

autonomous participation in a political process of decision-making, in which they are to reciprocate commitments taking into account their equal worthiness (source of valid claims). Individuals' constitution as active moral agents would be at the end of the day related to a qualified political participation in communal life, by which the exercise of their equal basic liberties is to be fundamentally preserved through the construction of a system of rights.

Unfortunately, the community's ethical role suggested above will not be fully explored in Rawls' writings. He follows a more restrained path by arguing for a mere political conception of justice. In "Political Liberalism" (PL), he will be looking for ways of securing agreement in a democratic society where individuals hold different comprehensive views of the good. And in these terms, it seems that he affirms a political conception of the person, in which a thinner notion of toleration that requires just reasonable pluralism between individuals' different takes on the good instead of a broader defence of the moral ideal of the person, in which liberal values such as individuals' equal right of exercising autonomy has to be argued for.

It should be stated however that his defence of political liberalism as a way towards social unity and political stability cannot succeed without implying a developed notion of moral agency. By taking for granted this notion of moral agency without analysing the elements involved in its development, his argument will necessarily lead to a quite impoverished understanding of the construction of just principles. Let me specify. In his explanation of the three main ideas grounding political liberalism, Rawls make continuous reference to the need for a moral conception of the person. First, the idea of an overlapping consensus is based on a political conception of justice by which constitutional essentials express common values of a public political culture that is not too distant from the individuals' own set of interests. This conception of justice is focused on justice as fairness. It, therefore, affirms a determinate conception of society (democratic society) and citizens as persons who have political virtues leading to mutual respect between free and equal individuals.⁶⁵ Second, it is based on the priority of the right over the good. It looks for neutral grounds, expressing a political conception of the

⁶⁵ John Rawls, Political Liberalism, p. 147.

society and the person that impose limits on permissible ways of life.⁶⁶ In this context, citizens are to be seen as able to develop moral virtues, which range from civility and tolerance to reasonableness and the exercise of a sense of fairness.⁶⁷ Third, it focuses on the idea of public reasoning understood as the reason of equal citizens who are ready to explain the basis of their actions to one another in consistency with their mutual freedom and equality.⁶⁸

The ideas delineated by Rawls in PL do, as he is prepared to admit, subscribe to a notion of a person that is to be constructed as part of a determinate social environment. The individual is someone who is able to reason publicly, in a way that is conceptually distinguished from, but not necessarily incompatible with, his private reasoning, as a member of a liberal democratic society. He is to be seen as a citizen participating in democratic procedures, limited by his ability to specify his demands in a coherent way and to respect other individuals as equally valid sources of claims. To some extent, the structure of an agreement between him and his co-nationals should reflect the way they value equality and freedom as essential parts of their human existence.

It is also worth pointing out that in a non-ideal world, this process will tend to be sustained by a welfare state, able to provide public means (economic and social facilities) that assure the emergence of individuals equally capable of developing their respective autonomous abilities.⁶⁹ In the Rawlsian scheme, the priority given to equality over efficiency (second principle of justice) seems to support this view and to hint once more at the potential ethical significance that could be attached to the role played by the political community⁷⁰.

But without a more detailed explanation of the reasons why individuals' participation in well-established democratic procedures becomes significant for the

⁶⁶ *Ibid.*, p. 192.

⁶⁷ *Ibid.*, p. 194.

⁶⁸ *Ibid.*, p. 218. It is worth pointing out that the notion of public reasoning so crucial to Political Liberalism will be further developed in little bits in John Rawls, *The Law of Peoples*, p. 136. Here he will underline the notion of reciprocity as individuals' ability to accept one another's reasoning. He will also stress individuals' need to exercise ultimate political power as a collective body.

⁶⁹ J. D. Moon, *Constructing Community: Moral Pluralism and Tragic Conflicts* (Princeton, Princeton University Press, 1993).

⁷⁰ It is worthwhile to notice that this active role assigned to the political community, in particular the state, is part of a new interpretation given to Kant's moral and political philosophy. See, for example, Allen Rosen, *Kant's Theory of Justice* (London, Cornell University Press, 1993), chapter 5.

construction of just principles and vice-versa, the exercise proposed by Rawls in PL becomes too limited, impairing its explanatory potential. The straight defence of a political conception of the person leads to a narrow understanding of the formulation of principles of justice. It is applied and justifiable only to a specific audience, which limits the potentiality of thinking about international morality. In broader terms, this defence restricts the philosophical exercise that is behind the construction of just principles. The aim of theory becomes more to articulate values and beliefs already existing in a particular context than to critically build arguments in defence of values that, though appealing first to the members of a specific society, do not necessarily circumscribe themselves to them.⁷¹ In so doing, he neglects the importance of the engagement of ideas outside a specific audience to build a legitimate justification for his principles.

1.3) Towards an Ethical Approach

I turn my attention now to the exploration of some of the elements of the ethical path that is hinted at but not fully developed in Rawls' work. I think the exploration of such elements can give way to a better understanding of the construction and realisation of enduring just principles in the international context, one that better considers the formation of a moral agent and how his qualified involvement in the political process of a specific system of rights can contribute to his moral development. What is of particular interest to my analysis is the exploration of two interconnected ideas delineated by Rawls: 1) that the development and preservation of autonomous thinking is foundational to the constitution of an active moral agent who stands as guarantor of agreements that guides common actions. This point is more properly explored by Rawls in his writings on Kantian constructivism; 2) that the exercise of citizenship (political participation in a well-ordered society) constitutes part of individuals' development as functioning moral agents able to think publicly in terms of equality and freedom. This point is indirectly dealt with in PL and in *The Law of Peoples*.

⁷¹The same kinds of argument will be further on developed in John Rawls, "Justice as Fairness: Political not Metaphysical" in Shlomo Avineri & Avner de-Shalit, Communitarianism and Individualism, p. 186.

Let me be more specific. Rawls focuses on a notion of moral agent that is centred on individuals' perception of themselves as independent thinkers. By that he means that individuals have the capacity for a conception of the good – to form, revise, and actively pursue a system of ends and values. They are also able to take part in a qualified common enterprise (co-operative endeavour among equally free situated members), sharing the capacity to accept, and act on respect, for the fair terms of this enterprise. The development of these agents' moral power, particularly their ability to act on the basis of fairness and to identify themselves with the values behind the acts taken (linked to the notion of having a sense of justice), has nonetheless to be understood in terms of their active involvement in the construction of a public culture.

It could be said that the development of individuals' moral capacities is dependent on the possibility of their fully exercising citizenship's rights. When taking part in democratic procedures, they learn to make explicit their own claims (related to their particular notion of the good), raising the possibility of their being contested and causing them to change their mind. By the same token, they learn to consider others as equals in the sense that they have to treat them with the same respect (as equal sources of valid claims). If we push the argument a little bit further, it could be said that: 1) they are exercising their independence and mutually recognizing each other in their capacity to make independent claims; 2) they are also learning to reciprocate commitments by understanding the requirements of mutual beneficial and fair co-operation and act on the basis of that;⁷² 3) and finally, they are learning to see themselves as units taking part in a whole they help to build and which has an overall effect in the building of their identity.

This suggested interpretation leaves open the way to a more comprehensive understanding of the exercise of public reasoning. Public reasoning is not only to be seen as a form of finding an overlapping consensus as suggested by Rawls, which implies in many cases the accommodation of different values held by the members of a society.⁷³ It can also be regarded as a form of individuals' exercising their capacities as moral agents. In this sense, it can be seen as a dynamic exercise in which individuals are prepared to

⁷² See Cohen on the links between the exercise of political liberties and the development of moral powers as well as between the development of political liberties and self-respect. See J. Cohen, "For a Democratic Society" in S. Freeman, ed., *The Cambridge Companion to Rawls*, pp. 96-111.

⁷³ That seems to be implicit in the notion of reasonable disagreement suggested by Rawls in *Political Liberalism*. Chandran Kukathas & Philip Pettit, *Rawls: A Theory of Justice and its Critics*, p. 148.

question and challenge values as well as to reflect about competing comprehensive conceptions of the good, even if it implies a long, slow and sometimes fruitless process. It is as participants in this process that individuals realise their autonomous critical thinking capacities and learn to set the limits of their actions in respect to others.⁷⁴

This exercise of public reasoning certainly presupposes the assignment of an ethical role to the political community. The *polis* is responsible for the preservation of basic individual rights, including both civil, legal and political rights (such as freedom of expression, access to fair legal procedures and participation in public decisions) as well as socio-economic rights (such as the right of access to employment and a minimum wage), which back the full exercise of the first generation liberties. But in providing this secure environment, the *polis* plays more than an instrumental role. It also instigates meaningful interactions by making individuals take part in the construction of a common public culture, sharing among equals the responsibility of shaping a common institutional environment that has a significant input in the formation of their personalities and more importantly in the moral motivation they have.^{75 76}

The ethical role that can be assigned to the political community has nonetheless a limit that should be clarified. As I will demonstrate in the following chapters, it is far from being fully determinate as the communitarians seem to suggest when arguing, with different degrees of intensity, for the community's direct interference in the construction of a common identity in order to maintain social cohesion. Individuals' opportunities to

⁷⁴ Cohen is close to the development of this argument when interpreting Rawls' meaning of democratic participation and the problem of denigration. See J. Cohen, "For a Democratic Society" in S. Freeman, ed., The Cambridge Companion to Rawls, p. 121.

⁷⁵ Gutmann sees Rawls defending an intimate marriage between these political liberties and personal freedoms. As she says: "Without basic personal freedoms, on the one hand, citizens cannot truly be free to criticize their government or to stand up to a majority in the name of justice. Without basic political freedoms, on the other hand, individuals cannot be as free as possible (consistent with basic personal freedoms) to shape the laws, institutions, and practices within which they can make personal choices about how best to live their own life." Amy Guttmann, "Rawls on the Relationship between Liberalism and Democracy", Ibid., p. 176. My interpretation goes a little beyond this notion of mutual dependence so to emphasise the constitutive role the political community has in individuals' moral formation.

⁷⁶It is significant to note that Rawls seems to point in this direction when admitting that in the realisation of their citizenships' rights individuals are also exercising the sense of justice (to be guided by a reflective acceptance of justice, that means, by a commitment to pursue their own good respecting other individuals' equal right also to do so). But he does not develop the issue further on. John Rawls, Political Liberalism, p. 334.

develop minimal critical reasoning (the source of their autonomy) should always be maintained since the latter is foundational to the existence of the political community.

The implications of this interpretation for the understanding of the construction of international just principles are many and also need further exploration. In consonance with Rawls' arguments, there should be no denying that liberal societies provide for the moment the necessary framework for individuals' development of their basic moral capacities and that the possibility of maintaining and further developing these individuals' capacities will be dependent on the existence of the same minimal conditions in other communities. But this admission does not represent the end of the story. It is important to notice that the enlargement of the social conditions responsible for individuals' further exercise of moral capacities will be dependent on the building up of a consensus among the communities over this minimum. And this building up is itself considered a dynamic exercise in which the general values on which this minimum consensus is grounded can in principle be contested by the representatives of communities, offering counter-arguments to better justify them. In this sense, it should be seen as an exercise of going back and forward on what counts as the more appropriate elements to the constitution of a moral agent

Looking from this perspective, the construction of international just principles becomes more than a mere compliance issue as Rawls suggests. It could continue to be seen as an ongoing process of justification of principles but one through which we can learn further about individuals' moral capacities since confronted with differences that are stronger than the ones related to the comprehensive doctrines present inside a multicultural society. By learning to deal with these differences through attempts to establish meaningful interaction (consensus), individuals could grasp what new significance respect for others as valid sources of claims could possess and consequently have new critical insights on the composition of their identity as well as on the validity of their actions. Kymlicka has expressed this point by affirming that ethical reasoning involves a continuous comparison between an encumbered potential self with another encumbered potential self.⁷⁷ For him, the basis of individuals' critical thinking criticism is always a balance of their individualistic perceptions and what society can offer to them in

⁷⁷ Will Kymlicka, "Liberalism and Communitarianism", *Canadian Journal of Philosophy*, p. 190.

terms of common values as well as an understanding of their socially located self and the prospect of what another social environment can contribute to the development of their capacities.

1.4) Concluding Remarks

Rawls has paved the way for the articulation and strengthening of universalistic and particularistic interpretations of the contemporary debate on justice. But he also offered some elements for the construction of a third perspective, one that reinterprets the relation between the individual and the political community in a less asymmetric way. This perspective assigns an ethical role to the political community in the formation of morally motivated individuals while preserving their independent thinking capacities. And in so doing, it can offer a set of reasons to understand why the political community has still an important ethical role to play in the construction of an international just order, subscribing to a view that the international dimension has to be comprehended in terms of its own dynamics and not as a mere extension of national concerns as suggested by Rawls when making the argument for compliance issues.

That can happen because I think it is possible to advance an argument that understands the agreement on principles of justice as a product of a constructed dialogue primarily established among communities who share a similar set of common values (democratic societies sharing the notions of freedom and equality as essential to their moral development). But these communities, because of the very essence of their role in helping individuals' development of their moral capacities (critical thinking), the exercise of which does not stop at the borders, will not be constrained by discussing international principles just among themselves and merely enforcing these principles around the world. They will have the disposition to look for meaningful forms of interactions, creating opportunities and incentives to attract other communities that hold different values to take part in an extended form of dialogue on how best to preserve their citizens' integrity as well as to extend their citizens' further exercise of inner moral capacities. And in so doing, they will tend to have a more encompassing and legitimate view on the

construction of international human rights principles, one that they will be willing to reinforce.

CHAPTER 2: Universalism

I will call universalism the ensemble of perspectives that characterises moral individuals as beings who essentially share a universal rationality and need the society only instrumentally to develop this innate rationality. Though individuals need society to provide a secure and predictable environment where they can develop their capacities as well as attachments that influence their perception of the self, individuals are not determined by it. They are not therefore pre-disposed by a historically situated viewpoint when thinking about general principles of justice. These principles can easily be derived from the fundamental equality that individuals enjoy *qua* potential rational entities, leading them to a fair agreement.⁷⁸

In the contemporary literature, this approach emerges mainly as a response to what is perceived as incoherence in the Rawlsian framework developed in *A Theory of Justice*. Universalists such as Pogge, Beitz and Barry regard as unfounded Rawl's assumption of self-sufficiency and self-containment of schemes of social co-operation to characterise the parties in the second OP. They all agree that the present economic interdependence conditions and the eventual claims deriving from the scarcity of natural resources invalidate claims to the existence of such schemes. These observations lead to an analysis of international relations from the perspective of the universal individual defined in the first OP.

In the present chapter, I argue that one of the greatest merits of this approach is its capacity of focusing on the fundamental elements that characterise the individuals as

⁷⁸ This version, which has its inspiration in Kant's works on the possibility of a cosmopolitan order, is also presently called moral cosmopolitanism in opposition to institutional cosmopolitanism. Moral cosmopolitanism is linked to the idea that individuals are fundamentally equal, which grounds the notion of impartial treatment, while institutional cosmopolitanism is related to the political constitution of the world, more specifically to the possibility of world government. See Charles Beitz, "Cosmopolitan liberalism and the state system" in Chris Brown (ed.), Political Structure in Europe: Ethical Perspectives (London, Routledge, 1994), pp. 124-125 and Brian Barry, "International Society from a Cosmopolitan Perspective" in David Mapel & Terry Nardin, International Society: Diverse Ethical Perspectives (Princeton, Princeton University Press), p.146.

autonomous entities despite their limiting historical conditions, making possible a much more comprehensive view of the content of principles of justice. But this approach also faces essential limits. The one I am particularly interested in exploring here is the way it neglects the analysis of how individuals actually become morally motivated entities. I argue that this approach does not understand the constitutive role historically situated political communities play in the formation of individuals able to understand, to get acquainted and to act in consonance with their moral responsibilities. By overlooking this issue, universalists end by creating schemes that, though leading to quite well-described and needed encompassing international principles, reflect a great gap between what is desirable and what is in fact feasible.⁷⁹

The present chapter will be divided in four parts. The first part explores the main thesis of the universalist approach and sketches a set of criticisms against this approach that will serve as elements in the construction of my own version of an ethical approach. The second and third parts are dedicated to the illustration of these criticisms with the analysis of some universalist authors' arguments. More specifically, the second part explores the universalist versions proposed by Beitz and Pogge, who work with the universal elements already present in a Rawlsian scheme in the description of the conditions of the first OP in order to construct a cosmopolitan order. The third part analyses more extensively the theoretical scheme proposed by Barry. This scheme is particularly significant for my analysis because it evaluates more explicitly the implications of the Rawlsian scheme from individuals' moral viewpoint to the construction of a just order. And from this point, it constructs a more robust version of moral cosmopolitanism based on Scanlonian premises than the ones suggested by Beitz and Pogge. And finally, some concluding remarks on the issues are presented.

⁷⁹From this perspective, the construction of consistent international principles of justice relies on equilibrium based on the denial of two extreme positions. It should not translate a utopian project that highly idealises the moral agent and disregards the circumstances that put constraints on their behaviour. At the same time, it should not represent the description of a mere reality since it would tend to restrain the principal aim of theorists when formulating principles, to propose a guide to a critical evaluation of present institutional arrangements and to the possibilities of change. This point has been constantly discussed in O'Neill's works. It has particularly been a subject of analysis in the public lecture "Is Universalism in Ethics Dead?" given at The King's College, London, January 19th 2000.

2.1) Critical Issues in the Universalistic Argument

Universalism regards the individual as someone who is born with the potentiality to exercise rational capacities to form an independent viewpoint and critically assess the circumstances that influence its construction and allows its pursuit. Every individual can be said to be equally owner of this potentiality though differing in the degree to which they share this potentiality and in the capacity of making use of it. The inner cosmopolitan dimension of a moral agent is, therefore, here presupposed, as everyone being potentially able to present equal valid claims to each other.

For this approach, individuals need society to develop their potential moral capacities but such a need is markedly limited. There is a clear admission that it is as member of a historically situated community in which social relations can be properly managed that individuals can realise their liberty without undue interference from others. It is also as part of this community that they perform social roles, establish routines and construct links that not only offer significance to their choices but also make their lives more predictable. The community nonetheless plays here only an instrumental role in individuals' development whose moral cosmopolitanism is intrinsic to their nature. Its action is at the end of the day limited by the impartial considerations that are derived from the realisation of the universal rational character already presupposed in individuals' constitution.

In my opinion, one of the greatest merits of the universalistic approach is to make possible an analysis of the deliberation of just principles from an *ab initio* point, in the sense that what is to be considered essential to the deliberation process is what makes individuals autonomous sources of valid claims in whatever the historical circumstances they find themselves. In so doing, this approach defends more embracing principles of justice. It will not be concerned merely with a formal analysis of these principles, that prioritises first generation rights (political and civil rights) in detriment of a more detailed understanding of second generation rights (social and economic rights) in the formation of moral agents. It will focus on the need to defend subsistence rights as a means to the full enjoyment of the more traditional civil and political rights as well as on policies to validate these rights at the global level. At an international level, it will question how far

economic re-distribution should be seen as a necessary strategy to empower the structures of existing political communities in the way to form agents who are both conscious of their moral responsibilities and motivated enough to act on the basis of them.⁸⁰

The merits of this approach are however impaired by the way it disregards the partially constitutive role that historically situated political communities play in the formation of motivated moral agents. The universalistic approach tends to take for granted the characteristics that define a moral agent in order to deduce far-reaching just principles. But in so doing, it underestimates the historical and social circumstances that make possible individuals' development and exercise of their moral capacities. It does not pay enough attention to the limits individuals have as historically situated beings who need the political community to provide for a social dynamic that helps to constitute them as active moral agents. It is in the exercise of their citizenship in a limited political community that individuals fully recognise each other in their equal capacity of independent critical thinkers (equal source of valid claims), learning to reciprocate commitments and to understand and appreciate the notion of partnership in the construction of common decisions. That exercise engenders a more motivated comprehension of their moral responsibilities and of what these responsibilities require from them in terms of actions.

I think it is a great error to underestimate such a constitutive role played by historically situated political communities in the development of individuals *qua* valid interlocutors. That is so because it reinforces the gap between individual's moral will (*a priori* thought) and individuals' empirical will (the proper exercise of the will taking a historical context). As a consequence, it leaves open the question of how desirable principles of international justice become comprehensible to individuals whose rationality is partially defined by the historical context in which they live. By the same token, it leaves unanswered the question of how these principles come to be seen as feasible and really carried out by motivated moral agents.

⁸⁰ This point will be explored in the next sections in which representatives of the universalistic approach, such as Pogge and Barry, will be looking not only for arguments to sustain the defence of re-distributive principles at the international level but also for the various possibilities, including international taxation, for their implementation.

2.2) Interpreting the Rawlsian Framework: Universalism in the Works of Beitz and Pogge

Beitz and Pogge develop their cosmopolitan schemes taking directly into account the Rawlsian framework. For them, the move made by Rawls from the description of the first OP in which individuals are subjected to *a veil of ignorance* when thinking about justice, to a second OP in which co-operative schemes of social co-operation (political communities) are said to represent the same individuals when deliberating about international just principles is essentially unjustified. The assumption of self-sufficiency and self-containment of social units that could eventually lead to the justification of political communities as the main moral entities in international relations do not hold anymore. Boundaries could not determine the limits of our social co-operation if we consider the present “circumstances of justice” – related to the increasing economic interdependence of these units and the scarcity of natural resources. Therefore, they could not determine the limits of our social obligations.⁸¹

Let me specify the arguments of both authors. Beitz believes that there is a need for a new normative theory in IR. The realist framework that currently dominates the IR debate, with its sceptical view of the formation of an international moral order, is no longer sustainable. That is so because the process of economic interdependence impairs the self-sufficiency and sovereignty of the units of this system.⁸² While this process brings multiplication of common benefits to the political communities, it also deepens inequality of power and access to resources among them. It ends by putting burdens on the domestic spheres of some countries, such as difficulty in controlling the domestic economy given the distributive and structural effects felt by their participation in the international economy, that jeopardise the integrity of their citizens.⁸³ Consequently, new forms of long-term co-operation that privilege the development of the individual no matter where and under at circumstances he finds himself are urgently needed.

⁸¹ Charles Beitz, **Political Theory and International Relations**, p. 151.

⁸² Ibid., p. 36.

⁸³ Ibid., p. 147.

In addition to the implications of his circumstantial observation on the evolution of the process of economic interdependence, Beitz presents a moral argument related to the countries' present access to natural resources. He argues that the scarcity of natural resources seems to put severe constraints on any claim of self-containment of social units. Natural resources are a factor that by helping or hindering the development of personalities can determine the success of domestic co-operative schemes. Because of their scarcity and their fundamental importance to individuals, the present distribution of resources can be regarded as morally arbitrary by the parties deliberating on international just principles.⁸⁴ Therefore none should have entitlements over these resources without a clear justification of why some individuals should be excluded from their use.

The above two considerations offer the foundation for the author's re-interpretation of Rawls' process of deliberation of international principles on the basis of the conditions expressed in the first OP. Individuals and not political communities, having no information about their inner capabilities and social conditions, should be the ones deliberating about the two principles of justice, concerning equal rights and socio-economic re-distribution. States can be understood as subjects of international relations only derivatively, so far as they are better placed than individuals or no matter other entity to guarantee practices and carry out policies that secure the effectiveness of the principles at the global level.⁸⁵ In this respect, the self-determination of political communities is regarded as an instrument to the proper end of social justice, related to individuals' exercise of their autonomy at a cosmopolitan level.⁸⁶

I think Beitz's arguments rest nonetheless on doubtful assumptions. In his defence of the instrumental role played by the state, he assumes that the world can largely be interpreted as a scheme of social co-operation. That seems doubtful in the following ways. Economic arrangements, technical support and even matters concerning the invasion of an aggressive country are gradually being discussed in connection with a common accepted framework of international rules and principles, which translate the

⁸⁴ *Ibid.*, p. 138.

⁸⁵ According to Beitz, the international difference principle should be applied to persons but states can be understood as subjects so far as they are more appropriately situated than individuals to carry out whatever policies are required to implement global policies. *Ibid.*, p. 153.

⁸⁶ Concerning the issue of self-determination, *Ibid.*, p.132 and also Chris Brown, *Political Restructuring in Europe: Ethical Perspectives* (London, Routledge, 1994), p. 124.

values of equal freedom at large. Partially, this tendency reflects the increasing pace of a process of interdependence that forces states and civil societies to find a form of regulating their interactions in a more direct and rationalised way. However, the process of interdependence as well as the expansion and validation of the main values underlying this process suffer some constraints. Individuals do not regard themselves as full members of an international scheme of economic or social interactions yet. Individuals are still more attached to rules, social roles and values constructed inside national borders responsible for giving them a common sense of identity, than the ones that are still in a developing phase in the international context.⁸⁷

The verification of present setbacks facing the interdependence process paves the way for some consideration on the limits of a universalistic view, which insists in attaching a merely instrumental role to the political communities in the construction of moral entities. Beitz' considerations on the potential existence of an international scheme of social co-operation notwithstanding, political communities still assume both a functional and constitutive role in the formation of individuals *qua* moral entities. Individuals are historically situated beings who need to form part of a social whole to become actively valid interlocutors. More particularly, they need to exercise their citizenship in a political community that allows them to take decisions autonomously, to respect each other as autonomous sources of valid claims and to reciprocate actions. It is in this environment that they become acquainted with values, such as equality and freedom that are to be incorporated in their lives as a guide to relationships not only with compatriots but also with non-compatriots, thus grounding their moral personality. Therefore a more active role exercised by the political community should be seriously taken into consideration when discussing the construction of just principles.

An important note should however be added here. I think that present political communities cannot be considered organic wholes in the full sense of the term. By organic whole, I mean an entity that gives a homogeneous and well-established unity to

⁸⁷Moreover, there are no conclusive elements to support the view that the process of interdependence, by revolutionizing the speed and intensity of interactions, will help forge a cosmopolitan identity among individuals in the near future. Even if this possibility could be easily envisaged, there would be a need to analyze in a more detailed way one particular side effect of the process. Besides contributing to the formation of possible new global identities, it helps individuals not only to be aware of their links with particular communities but also to be more inclined to develop them as the result of a search for differentiation in a highly homogenized world.

individuals that form part of them. This is mainly due to the character of contemporary multicultural societies, composed of individuals who differ in terms of religious beliefs, ethnicities and group interests. But it is possible to say that these societies still offer the framework, mainly through the maintenance of a propitious environment where citizenship rights can be actively exercised, to the construction of basic common values that help individuals to constitute themselves as moral agents.

Instead of offering some responses to the kind of criticisms signalled above, Beitz prefers to go on defending a more embracing version of cosmopolitanism in subsequent articles. In this version, he thinks it unnecessary to consider the circumstances of justice - the existence of an international scheme of social co-operation - in the construction of universal just principles. He only takes the individuals in their universal potential capacities as moral agents. As he states:

[...the two essential powers of moral personality – a capacity for an effective sense of justice and a capacity to form, revise, and pursue a conception of the good. Since human beings possess this essential power regardless of whether, at present, they belong to a common cooperative scheme, the argument for construing the original position globally need not depend on any claim about the existence or intensity of international social cooperation.]⁸⁸

By taking the individual for granted without really considering the necessary limits he is subjected to in the development of his capacities, Beitz disregards the effects of the gap between individuals' moral will and their practical will in the deliberation of just principles. The *a priori* universality of individuals' rationality does not provide them with the moral motivation to carry on with the realization of their capacities in practice. This motivation is much dependent on the feelings that arise among individuals in the exercise of citizenship, learning to reciprocate commitments and taking part in the construction of a common identity in historically situated political communities. It is under these particular circumstances that individuals get acquainted with their moral responsibilities and acquire a commitment to them.

Just like Beitz, Pogge also sees the limitations of IR theories that interpret international relations on the basis of a prudential rationality that is affected by the current distribution of power. But differently from him, Pogge proposes the construction

⁸⁸ Charles Beitz, "Cosmopolitan Ideals and National Sentiment", The Journal of Philosophy, Vol. LXXX, No. 10, October 1983, p. 595.

of a moral global order based on value pluralism.⁸⁹ Tolerance, born from the acceptance of reasonable disagreement among political communities, will lead to the gradual establishment of firm-value based institutions that will stand above the shifts of power. This will pave the way to a world without serious deprivations and with feasible institutional schemes able to effectively secure basic human rights.⁹⁰

Despite this defence of valued pluralism among political communities, what grounds Pogge's conception of a moral global order is a universal individualistic conception of the moral agent and its rights derived from his interpretation of the Rawlsian scheme. Pogge argues that the distribution of natural resources is a social fact. It is among the benefits and burdens of social co-operation and therefore needs justification. Taking the perspective of the individual in the second OP, he poses the following question: Given individuals' equal right to have a share in the world's natural resources to develop their autonomous capacity, how would a just global institutional scheme regulate ownership and control over these natural resources?⁹¹ The answer to such a question would involve the maximal support of basic rights and liberties to foster fair equality of opportunity worldwide. The generation of social and economic inequalities would be possible so far as it optimises the social conditions of the globally least advantaged.⁹²

For Pogge, a feasible scheme towards a more egalitarian global economic institution would necessarily involve the implementation of a Global Resource Tax (GRT). Such a tax is a tax on consumption and would fall on goods and services roughly in proportion to their resource content, to how much value each takes from our planet.⁹³ The income derived of this tax would revert to the poorest in the world, bettering their access to basic services that are fundamental to their development as valid interlocutors in the international scenario.

⁸⁹ Thomas Pogge, *Realizing Rawls*, p. 226.

⁹⁰ *Ibid.*, pp. 238 and 269.

⁹¹ *Ibid.*, p. 252.

⁹² *Ibid.*, p. 254. Implicit in this reasoning is the defence of the two principles of justice proposed by Rawls. They represent a form of guaranteeing that every individual will have the resources to develop as autonomous beings (valid interlocutors), keeping even pace with the eventual changes in the circumstances of other individuals who can profit from differentiated social and natural capabilities as stated in the difference principle.

⁹³ Thomas Pogge, "An Egalitarian Law of Peoples" in *Philosophy and Public Affairs*, Summer 1994, Vol. 23, No. 03, p. 200.

In my understanding, the fundamental problem in Pogge's theoretical framework is the fact that it is based on an abstract construction of the moral entity that downplays the role a social milieu has in providing for the actual functioning of this agent. Though historical circumstances are considered when defending reasonable disagreement in the actual construction of the value system, it is clear that Pogge takes the individuals as *a priori* moral entities to derive the core principles and their pragmatic implications. In doing so, he comes to attribute a mere instrumental role to the political communities, which should be evaluated only in terms of their capacity to provide basic services to their members, guaranteeing the enjoyment of their autonomy without substantially affecting the autonomy of non-members.⁹⁴

Following the same line of criticism I have been addressing in relation to Beitz's scheme, Pogge can be accused of underestimating the fundamental role historically situated political communities play in the flourishing of moral individuals. It is when taking part in the construction of a political community that affects his notion of identity that individuals can get acquainted with specific features, particularly an understanding of interlocutors as equal sources of valid claims that will form them as motivated moral entities.

I am aware that the defence of this line of argument encompasses a tension between the two sides of the moral agent – a universal rationality that is innate to every individual and its specific social realisation that offers it meaning and helps to motivate this individual to action. But rather than seeing it as undesirable as is the case in the universalistic view, this tension is seen as an intrinsic part of individuals' moral development. Individuals must be able to reconcile themselves with the social roles they are supposed to perform by having a critical insight into their function.

Pogge's analysis illustrates the point. In the development of his arguments, he prefers to deconstruct the tension by focusing on the universal rationality of individuals. He implies that individuals have an innate moral motivation, which can be developed universally in similar terms despite the historical constraints it faces. But in the actual construction of a principled international system, he is obliged to consider the existence

⁹⁴ For Pogge, political arrangements should be evaluated impartially, in terms of the impact on the basic HR and interests of all those affected. By all those affected, he means the interests of individuals globally located, compatriots and non-compatriots. Thomas Pogge, Realizing Rawls, p. 135.

of moral disagreement and the need for giving incentives to stimulate reflection among compatriots so they can think about the burdens and gains of a new order based on more egalitarian global economic institutions.⁹⁵ With such a move, he is assuming that there is a gap between what is ideally aimed at and what the obstacles to make it feasible are. Moreover, he assumes that the best way to deal with this gap is to make a two-steps move instead of analysing the issue in an interrelated way. He considers first the view of a universal individual in abstract and then identifies the best measures to arrive at the goal given the constraints these individuals face in the real world. As a consequence, his scheme can be accused of being too demanding for an individual who does not act *a priori* and so does not act logically and unattached to his social circumstances.

2.3) Barry's Innovative Theoretical Scheme

Barry's criticism of the Rawlsian scheme relates to what he regards as an incompatibility between rationality and reasonableness (impartiality) in the definition of the parties and the circumstances of justice in the first OP. This incompatibility generates inconsistencies that affect the integrity of the international deliberation of principles in the second OP. The emphasis merely on the rationality of the parties, each one pursuing his self-interest, can lead to a *modus vivendi* situation. Yet the introduction of reasonableness through the *veil of ignorance* to deal with this kind of permissive effects leads to an unsatisfactory definition of the contracting parties, forcing Rawls to add controversial assumptions to his scheme so as to construct a properly functioning moral agent. For Barry, these assumptions reveal clearly the fact that Rawls' understanding of justice is just an expression of liberal values. And they serve to show that international principles can only work out among liberal societies, serving in this sense to maintain the present *status quo*.

Let me explain the point. For Barry, Rawls' admission that the parties should be primarily regarded as rational actors capable of defining their specific good and choosing the best means to attain it imposes a constraint on the construction of the

⁹⁵ Thomas Pogge, "An Egalitarian Law of Peoples" in Philosophy and Public Affairs, p. 220.

principles of justice both in the first and second OPs. The principles would somehow result in a sense of common advantage among the participants, who would regard them as a necessary means to pursue their different conceptions of the good. Such a sense of advantage is derived from a bargaining game among agents who, despite having diverse notion of interests and tactics, do not necessarily have at their disposal the same level of power. The assumption of the discrepancy in the allocation of power leads to the possibility that the political community that is capable of gathering a significant amount of economic, cultural and military resources, will set the rules at the international level. When this argument is driven to extremes, *realpolitik*, marked by the idea that political issues in the international context are considered in relation to the national interests of each bounded community – seen generally as opposed to each other, becomes a fact.

As Barry points out, there will hardly be a possibility of supporting the principles suggested by the Rawlsian scheme in this scenario. From a rational point of view, it is too demanding to ask a political community to act fairly, a process which will eventually involve compromise and delays in the attainment of its objectives, when they can get what they want more quickly and more effectively by using their power. Second, even if the rich and powerful political communities could rationally accept principles founded on the value of freedom and equality, there would be no guarantee that these would constitute a fair agreement. It is most probable that they would result in very basic rules of co-existence that would allow powerful countries to meddle in the affairs of other countries when it is convenient.⁹⁶ In these terms, any notion of universality of principles of justice will become quite limited, if non-existent.

On the other hand, the use of reasonableness to cope with the undesirable effects of self-interested parties' actions in the construction of just principles brings another set of problems. As Barry suggests, the introduction of *the veil of ignorance*, a device requiring the contracting parties to act uninformed about their particular skills and *status* in society, leads to a distortion of the characterisation of the parties and to a flawed justification of the agreement. In the international context, the political communities would not know about their general welfare, related to the extent of their territory, population, natural resources, economic development, and amount of power.

⁹⁶ See Brian Barry, *Theories of Justice* (Berkley, University of California Press, 1989), page 187.

Consequently, the entities are obliged to reason taking into consideration their position of intrinsic equality - an impartial standpoint.

However valid, the use of *the veil* does not take into consideration the issue of “separateness of people”.⁹⁷ By eliminating the entities’ access to knowledge about the essential components of their identity and ranking the search for primary goods among their most important aims, Rawls fails to consider any fundamental distinction among the parties. Even if we admit that there can be a difference in the way the parties perceive the distribution of primary goods, with some of them preferring to have more access to this kind of goods than others, the general structure of desires and goals will be already defined. Therefore, the bargaining game implicit in the assumption of the rationality of the parties will be either pretty limited or non-existent. And the need for an agreement will be eventually put into question.⁹⁸

The introduction of other theoretical devices to deal with the shortcomings derived from the use of *the veil* imposes further limits to Rawls’ scheme. In the first OP, Rawls is obliged to add risk-aversion in the characterisation of the parties, in the sense that they would not make an agreement that they know they couldn’t keep, or one that would impose great difficulty in following⁹⁹. That happens because he cannot prevent the parties under the veil from choosing principles on the basis of a utility function – which could impose enormous burdens on the worst-off in the name of the well being of the majority. By the same token, he cannot restrain the entities, on finding out that they fare badly after the lifting of the veil, from rejecting principles. Such a theoretical device rather than solving the problem of moral motivation facing the individuals serves to underline it.¹⁰⁰ The full attribution of a moral nature to the entities will be further explored in the works published after the debate stimulated by *A Theory of Justice* and

⁹⁷ The problem of “separateness of people”, as expressed by Barry, is primarily linked to the construction of the first OP, national context. However, I think that the same kind of criticism is valid for the second OP. That is the reason why I am introducing the subject in the analysis of the international context.

⁹⁸ See Brian Barry, *Justice as Impartiality* (Oxford, Oxford University Press, 1995), page 61.

⁹⁹ *Ibid.*, pp. 62-65 to an evaluation about “the strains of commitment” in Rawls’ theory. For a more synthetic version, see Paul Kelly., “Contractarian Social Justice: An Overview of Some Contemporary Debates” in David Boucher & Paul Kelly (eds.), *Social Justice From Hume to Walzer* (London, Routledge, 1995), page 183.

¹⁰⁰ See John Rawls, *The Law of Peoples*, page 57.

more recently in the re-edition of *The Law of Peoples*, in which he fully attributes a moral nature to the entities.

Rawls tries to put aside many of the above criticisms by reiterating the view that the problems facing the characterisation of the parties in the first OP do not necessarily transpose to the second OP. That happens because according to him the entities in the second OP are reflecting on the advantages of applying principles that already exist at the national level and not starting a process of choice from scratch. Under these circumstances, the parties are solely characterised as peoples that are restrained in the use of their “prudential rationality” by the moral concerns of their representatives.¹⁰¹ They are then seen as the legitimate representatives of groups of individuals that are part of self-contained co-operative schemes regulated by just political and social institutions (well-ordered societies), which influence the formation of their moral character. From this viewpoint, the action of peoples has to be guided by the notion of fairness that is embedded in these national institutions and has a substantive role in the development of their members’ moral character.¹⁰²

By explicitly admitting that the way a co-operative scheme is in effect run influences the formation of moral entities, Rawls calls attention to an important feature of his scheme that was not made explicit before. The different communities described by Rawls are in fact characterised by a common endorsement of the elements that compose reasonableness (freedom and equality) despite the opposing interpretations about their relative importance or the best methods to institutionalise them. Principles of justice will therefore be better formulated and implemented among individuals living in the same

¹⁰¹ Taking into consideration the international context, Rawls introduces a distinction between states, a concept widely employed by *realists* like Clausewitz, and peoples. While the state embodies the acceptable use of “prudential rationality” in the pursuit of national interests, including the right to go to war, peoples are constrained by moral concerns when choosing a strategy of action. John Rawls, *The Law of Peoples*, page 38.

¹⁰² Despite the appeal of attributing a moral character to the entities, Barry is right in the fact that Rawls still has to explain why it should override rational considerations. Considering that the primary objective of the political communities is to maintain their “territory, environmental integrity and size of their population”, why should they necessarily opt for just principles (fairness condition) to establish a regulated pattern of interactions that guarantees the emergence of a secure and prosperous international environment? Rawls seems to be neglecting the importance of rationality in attitudes of individuals’ representatives when reinforcing the idea that people should act morally. And that sometimes seems to be a too stringent demand. This question is particularly posed by Brian Barry in *Theories of Justice*, page 185.

community or, at the limit, among individuals who though part of different political communities are able to share quite similar values.

Considering this revised version of the Rawlsian scheme, Barry makes a valid criticism by affirming that it will most likely be the case that these principles would end up making sense only among liberal states. Even if they could help thinking about the needs and restraints experienced by non-liberal communities, their capacity to address problems derived from a different perception of fundamental values would always be considered pretty limited. Such a limiting scope for these principles would contribute to reaffirm the claim that “justice runs out when we most need it”.¹⁰³

Barry also presents another valid set of criticisms regarding Rawls’ understanding of the content of principles of justice. For him, Rawls assumes that individuals should be part of a self-contained scheme of co-operation in order to be considered a subject to whom justice is owed. But this supposition clashes with some observable facts. First, there are many individuals who despite being unable to co-operate in a national context because of some temporary or permanent incapacity are still entitled to the benefits of the co-operative scheme. Second, there are many people who although contributing to different national schemes of co-operation - other than the one he is formally attached to - are not entitled to receive the full benefits of these schemes in an increasingly interdependent world. Besides that, it is possible to present a counter-argument based on the fact that distributive questions can appear before co-operation necessarily takes place¹⁰⁴.

In face of these points, a Rawlsian defence of a formal content to the principles, re-emphasising the premises of the existent system of international public law – supposition of equality among peoples, duty of non-intervention, respect for human rights, has to be rejected as superficial. It does not take into account the substantive implications of accepting equality and freedom as general principles, neglecting an analysis about the fairness of the present distribution of wealth and power among communities and how it affects individuals’ development. In other words, it fails to

¹⁰³ *Ibid.*, p. 339.

¹⁰⁴ It is easy to realise that Barry follows Beitz and Pogge in some of the criticisms presented here. Brian Barry, “Can States be Moral? International Morality and the Compliance Problem” in Brian Barry, *Democracy, Power and Justice: Essays in Political Theory*, (Oxford, Clarendon Press, 1989), page 423.

discuss the principle of “an equal distribution of income” at the international level and its consequences for individuals’ access to the minimal means necessary for them to function as moral agents.¹⁰⁵

The above criticism raised by Barry regarding the Rawlsian framework paves the way to a new version of moral cosmopolitanism. For Barry, international principles of justice should be based on an impartial consideration of each individual who will be affected by the final choice regardless of space and time. Membership of a society is important in the formation of individuals’ identity since it offers them a sense of belonging to the point that they can find their greater fulfillment within the dense network of family and community, which helps them to carry on social obligations. But this social membership is deprived of deep moral significance in two broad senses.¹⁰⁶ First, it does not demand from individuals continuing and close subservience to a specific national political authority given that this subservience is justified on the basis of its direct impact on individuals’ enjoyment of basic rights that are taken to be universal and equally assessed by people living worldwide. Political power has here a mere derivative and contingent value.¹⁰⁷ Second, any regime of exclusion could be justified on a universal ground. It is acceptable that individuals living in a specific community share some obligations and rights that are not attributed to non-members. Nonetheless, the attribution of special treatment to compatriots could be justified taking into consideration reasonable arguments, which are regarded as acceptable by everyone.

From this perspective, Barry rejects the rigidity of borders just as much as Beitz and Pogge. Though demarcated communities influence the constitution of an individual’s identity, giving them an attachment to particular social standards, they do not predispose the individuals to think about international justice from a comprehensive point of view on the good. Individuals have the potentiality to realise that the boundaries established and maintained by political authorities are a mere useful convention. The existence of these boundaries are instrumental to their development but can easily be put

¹⁰⁵ See Brian Barry, “Can States be Moral?” in *Democracy, Power and Justice: Essays in Political Theory*.

¹⁰⁶ See Brian Barry., “International Society from a Cosmopolitan Perspective” in David Mapel & Terry Nardin, *International Society: Diverse Ethical Perspectives*, pp. 145 and 157.

¹⁰⁷ *Ibid.*, p. 160.

into question when considering the fundamental equality that should underline a fair agreement in the international context.

In the process of constructing a more robust version of moral cosmopolitanism than the ones presented by Beitz and Pogge, Barry considers Scanlonian theoretical premises. He introduces the idea that individuals have, as common experience shows, a “widely shared and deeply grounded” desire to justify their actions on the basis that none could reasonably reject¹⁰⁸. The effectiveness of this desire rests on the individuals’ ability to have a freely chosen objective and to envisage rational means to attain it, including their capacity for discussing with their fellows on an equal basis the validity of the argument. In these terms, equality signifies that everyone has a veto power to reject unreasonable claims based on likes and dislikes and not on logical arguments that justify their validity¹⁰⁹. Moreover, it also implies the existence of a similar level of moderate scepticism among the parties in order to prevent any comprehensive conception of the good from constituting the basis for an agreement on reasonable terms.

In regarding specifically the characterisation of the parties, I would say that such a theoretical framework is much more persuasive than the Rawlsian one. The identity of the parties is here fully preserved. They are supposed to decide about the principles having a complete knowledge about their social status as well as their particular abilities and interests. Additionally, their impartial considerations are not dependent on the existence of any external device, such as *the veil of ignorance*. Impartiality is supposed in the motivation each individual has to act reasonably so as to obtain consensus.¹¹⁰ There is in this sense a subtraction of the importance of context to individuals’ moral constitution. Moral motivation is simply taken for granted as a potential, constant and generalised element in the constitution of an individual. However questionable, the

¹⁰⁸ See Brian Barry, *Theories of Justice*, page 284.

¹⁰⁹ The notion of reasonableness, as a search for consistency through the rational explanations of an action opens the way to universality, defended by Barry in the construction of the international principles. A good argument linking morality and the criteria of universality is exposed by A. Ward, “Morality and The Thesis of Universalisability” in *Mind*, Vol. LXXXII, No. 326, April 1973.

¹¹⁰ According to this view, impartiality reveals individuals’ interest in coexistence as autonomous individuals, equally able to present valid claims. Partiality is what falls outside this basic concern, making possible actions that are based on specific social attachments. But it has to be justified by impartial considerations. To some extent, it is a defence of the instrumentality of partiality – a functional view. I come back to this issue when discussing the functional view in chapter 4. I will then make a point in relation to Barry’s views in “Justice as Impartiality”, which offers some insights in the understanding of the role played by different political communities in the international context.

avoidance of discussing how moral motivation can actually flourish serves a purpose: to underline the essence of the moral agency and, from this viewpoint, to interpret the content of the principles in a more enlarged way, focusing on the basic needs and interests of individuals worldwide.

The content of the principles proposed by Barry takes into account three issues 1) the allocation of rights. Human agency should be respected equally. Any inequality should be justified on reasonable terms; 2) desert. Any individuals should be held responsible for their acts and the victims of unavoidable misfortune should be compensated; 3) need. Every individual should have their basic human needs satisfied in relation to their non-vital interests. The logic behind the principles is that everybody should not only be entitled to equal rights but also to dispose of the necessary means to enjoy them. From this viewpoint, basic rights (including the right of subsistence) should have priority over other ones that despite their importance assume a derivative character.¹¹¹ Inequalities are allowed only so far as it has a justification that can be easily assessed and accepted by everybody. They are not to be the fruit of coercion or established in detriment of the non-fulfilment of basic needs. Everyone should hold moral responsibility for harmful acts towards his fellows. Human misfortunes should be compensated so far as it is the fruit of bad luck – something that goes against the presupposition of equality and is not caused directly by the individuals in question.

The contrast between what is theoretically conceived in terms of principles and what is in fact demanded leads Barry to defend global taxation. On the one side, he sees the fulfilment of individuals' basic needs as the *sine qua non* requirement (minimum) to the development of moral agents. This achievement is essential so far as it is only in a world where the interlocutors are fully aware of the rules of the game and effectively assume their role as moral agent, openly expressing and putting into practice their primary motivation, that peace can be established in the long run. On the other hand, he realises that nowadays there is widespread poverty in the world and the gap between rich and poor is far from narrowing. This realisation leads him to make a pragmatic demand:

¹¹¹The defense of fundamental equality, based on the fulfillment of individuals' basic needs, leads to a discussion about the importance of subsistence rights. It emphasises the fact that rights such as political liberties cannot be enjoyed without the minimum means of economic and social welfare being guaranteed to the individual, for example shelter, food, access to education. Otherwise, it becomes just a hypothetical right that means no right at all in terms of validity.

the imposition of a tax on rich countries (proportional to their GNP) destined to meet the basic needs of poor individuals.¹¹²

I see as one of the great merits of Barry's encompassing understanding of the content of the principles that it paves the way to a much needed discussion about how far egalitarianism can be considered without economic redistribution being necessarily vindicated. As I pointed out in chapter 1, Rawls defends the widely accepted idea that rich countries have a duty of assistance towards impoverished nations that is valid until they are able to dispose of the minimum to achieve their political autonomy.¹¹³ Although it should be praised as an effort to delimit the final objectives of distributive principles, this interpretation is unable to deal with the issues in question. There is not necessarily the possibility of a claim-right (based on the idea that someone justifiably deserves something) being made by developing nations towards developed ones when a duty of assistance is emphasised. A positive action can't necessarily be urged or pressed against someone. It can always be seen as a favour being done by rich countries towards poor lucky people¹¹⁴. Moral responsibilities are not precisely defined in this context.

I think the emphasis on the duty of assistance seems also to neglect the essential issue in the debate about the content of justice: how far the promotion of economic development should be pursued as a goal in order to sustain political autonomy. Studies that underline the idea that political autonomy in disadvantaged societies has to be achieved with "a helping hand" from more developed communities don't take seriously the present need for discussing re-distributive issues in a comprehensive way¹¹⁵. This "helping hand" seems to constitute the minimum of economic and social support necessary to consider a political community as a player in the international scenario. But the achievement of this minimum does not end the discussion about economic

¹¹² See Brian Barry, "International Society from a Cosmopolitan Perspective" in David Mapel & Terry Nardin, International Society: Diverse Ethical Perspectives, pp. 146-154.

¹¹³ According to Rawls, this minimum is associated with just liberal or decent institutions, which are responsible for the development of full moral agents nationally and ethical states internationally. John Rawls, The Law of Peoples.

¹¹⁴ This point has more precisely been made by Shue in Henry Shue, Basic Rights Subsistence, Affluence and U.S. Foreign Policy (Princeton, Princeton University Press, 1996), p. 14.

¹¹⁵ See for example the way Rawls discuss assistance to a burdened society. According to him, this society can benefit from the political and cultural background of more developed communities as well as the human and material capital offered by them to develop its basic public institutions. John Rawls, The Law of Peoples, p. 160.

redistribution if great levels of inequality will still persist, as it is the case. The structures of the world economic order currently lead to the perpetuation of inequalities (gaps of development) responsible for the formation of a category of second-class citizens in world affairs that needs justification. In these terms, the criteria that establish the countries' ownership of natural resources by denying the historical contingency of borders and also the present international rules and institutions that while claiming to be fair allow worldwide deprivation will have necessarily to be put into question.

The defence of such a comprehensive view on redistribution has many important pragmatic implications that should be further considered in the following chapters. It does not only demand the formation of an international economic aid scheme supported by developed countries as proposed by Pogge and Barry. It also requires a clear evaluation of categories of analysis, such as the duties to avoid deprivation ("not to eliminate a person's only available means of subsistence") and to protect from deprivation ("duties to protect people against deprivation of the only available means of subsistence by other people") in the international context.¹¹⁶ This last duty is directly linked to the reformulation of present international institutions in terms of making effective the necessary means to prevent communities from deprivation - from the use of coercive mechanisms to a search for a more balanced representation between the different claims made by societies.

Barry's merits in constructing far-reaching principles of international justice do not however eliminate the fundamental problems facing his scheme in my view. It fails to consider the intrinsic relation between the construction of general just principles and the historically dependent formation of moral entities. While the attribution of a certain kind of moral motivation among individuals living worldwide helps to generate a serious debate about individuals' general needs and interests as thinking agents, it also represents a trap in the development of a consistent theory that aims to serve as a guide to action. That happens because Barry works with an ideal situation in which all individuals share a moral motivation to justify actions on the basis that none could reasonably reject. By sharing this motivation, they are predisposed to recognise each other as interlocutors of a dialogue based on the respect for equal autonomy, a feature that will result in the

¹¹⁶ See Henry Shue, Basic Rights: Subsistence, Affluence and U.S. Foreign Policy.

formulation of international just principles. But a pressing question is not answered here: how do individuals become in fact actively morally motivated agents? Without offering a consistent answer to this question, his scheme can be accused of turning morality into a banal issue, misinterpreting the relation between desirability and feasibility when considering the construction of principles or even, what is worse given Barry's own motivation, of trying to impose comprehensive liberalism on the world.

To be fair to Barry, it is important to point out that he does give two conditions to the development of individuals' moral motivation: 1) experience of dependence on others. Individuals develop the feeling that they can rely on each other; 2) equality of power. Individuals have the assurance that they can have access, in relative terms, to the same kind of means to express their claims. They will not be wrongly induced or pressed to accept a certain proposition.¹¹⁷ It is clear that these conditions are based on the idea that individuals are pre-disposed to live in a social environment where they can share some values, much linked to equal respect for individuality and the rationality of arguments.

But if that is the case, Barry will be impelled to consider how far the kind of social context here implied can be found worldwide and, at the same time, how far the role of contingent communities can be disregarded in the development of moral motivation. It is possible to admit that individuals prefer to justify their actions on reasonable terms in world affairs nowadays. That is what indicates, for example, the spectrum of multilateral regimes and the great number of their members. But the evidence supporting this view is far from constituting a firm ground for the emergence of a cosmopolitan world order or a cosmopolitan identity based on values such as equality and freedom as pointed out in chapter one. It is still as a member of a territorially limited political community that individuals develop and learn to appreciate these values. And in my view it is also possible to say that the development of "a sense of justice" to maintain a just world derives in fact from a "socialisation" process involving the links individuals develop not only with family, neighbours, and civil society but also with the political institutions. It is when being exposed to institutions that embody rational deliberation

¹¹⁷See Brian Barry, "Can States be Moral? International Morality and the Compliance Problem" in Brian Barry, *Democracy, Power and Justice: Essays in Political Theory*, and "Can States be Moral?" in *Ibid*.

practices, referring to the presentation of arguments on the basis that every claim should be treated equally, and actively exercising their citizenship that the individuals become able to appreciate some virtues as openness to co-operation, tolerance and so on.

In face of these observations, I think my criticism of Barry's scheme still holds. Political boundaries still substantially affect the formation of an individual's identity. It is as members of a defined scheme of co-operation regulated by just institutions that demand from them an active participation in political decisions that individuals develop a common understanding of moral responsibilities and how these responsibilities should be transformed into action. A circumscribed and stable social environment, with well-functioning institutions and established practices of rational deliberation, that can more effectively be evaluated, sets common standards that can contribute to the proper exercise of citizenship. It is by exercising their citizenship in this environment that individuals learn to reciprocate actions on the basis of independent reasonable claims while feeling part of the construction of a common whole, which grounds a common identity. Both the attitude and the motivation here developed will be fundamental to the formation of an active and responsible moral entity.¹¹⁸

As I pointed out before, the constitutive role here supposed by the community does not however imply that individuals are irreversibly determined by it. They develop their capacity to put in question the legitimacy of a political authority so far as they are exposed to institutions and practices that embody a defence of rational procedures. In the process of getting acquainted with rational argumentation based on equality, they develop their moral autonomy – the ground on which universalism rests. Boundary, in this sense, should not be taken as a static concept. It can be contested when the political authorities are undermining the existence of a social environment in which the achievement of welfare and the development of moral capacities by the individuals are possible.

Taking into account my criticisms, Barry's project actually has to assume a much more limited dimension to sustain his claims regarding the possibility of constructing a moral world order. The formative elements of the ideal situation proposed by him are, as

¹¹⁸ There is certainly the idea that, by securing the existence of a certain environment, historically situated political communities naturally allow some ways of life to flourish better and therefore to be more fulfilling than others are. This is particularly valid when impartiality is seen as a precious component of an individual's perspective on the good (partial standpoint).

a matter of fact, still circumscribed to liberal societies where a social environment characterised by the institutionalisation of the public use of reason on equal terms allows the development of moral agents and their primary motivation. It is only in these societies that individuals tend to form the integral identity, i.e. without dichotomy or contradictions, that is necessary to think about international justice on the grounds proposed by the author's original scheme. Consequently, his argument about an international redistribution of resources, implicit in the creation of a tax, will only make sense among liberal countries where individuals consistently share the same moral motivation.

It is clear that the acceptance of the limits of his enterprise can put Barry in an uncomfortable position. As he tends to consider only those who already have a qualified moral standpoint – someone able to present a claim on reasonable terms and to act according to it, one could argue that the others who haven't this moral disposition are not seriously taken into consideration in his analysis.¹¹⁹ Moreover, when regarding people living worldwide as sharing the same essential values and dispositions, his scheme supports the idea that there is only one coherent notion, based on equality and freedom, about what justice is and what it demands. This kind of perception could easily justify the view that people who are not prepared to share the same values can be coerced in a legitimate way. In other words, there is the possibility that, by taking for granted a widespread moral motivation, Barry would end up embracing a notion of comprehensive liberalism that dangerously neglects the real importance of diverse contingent identities in the interpretation of the content of international principles.¹²⁰

A way out of this difficulty, and one that I intend to explore in the following chapters, is to accept that individuals living in liberal countries have a duty or an interest in enlarging the conception of a moral community. In this perspective, there should be a clear admittance that liberal states share the general intention to construct a more regulated and yet challenging international environment for their citizens. And therefore they look forward to pursue foreign policies directed to the defence of equal freedom, perceived as the requisite for the empowerment of moral agents no matter where they

¹¹⁹This point was specifically raised by Prof. John Charvet in discussions on the topic.

¹²⁰ I develop this last point more properly in chapter 5, on the characterization of the international system.

live.¹²¹ This strategy would be mainly grounded on the realisation that the diffusion of the main elements that sustain a notion of reasonableness can enable individuals to become effective and trustful interlocutors.

In this perspective, the scope of justice is neither necessarily restricted to liberal states nor represents the forceful co-optation of non-liberal communities. It has a dynamic character so far as it represents a dialogue that is being continually constructed, primarily, between political communities representing individuals that share similar values and further on, between them and societies representing individuals who are subjected to a quite different kind of political and social logic but are willing to take part in a meaningful kind of interaction. It involves an ongoing process of inclusiveness based on how far individuals' representatives are ready not only to agree on values and standards of interaction but also to discuss from various perspectives its underlying function and significance.

Universality will be in this sense derived from a dialogue that though founded on the basic acceptance of fundamental values such as freedom and equality among communities is constantly *in construction*, involving exchange of ideas and openness to accommodate difference. In this view, the specificities that offer differentiated characters to communities will continue to exist among countries that emphatically reject liberal values as well as between those endorsing them. The ones that are prepared to share common values sustaining individuals' basic rights in the international context will not be condemned to a homogenisation process concerning their internal affairs. They will still have the space to discuss particular forms of putting into practice these rights as well as expressing their identities.

¹²¹ Even if Barry does not expressly endorse the view that fundamental equality should be translated as a coherent foreign policy of liberal states, it seems to be implicit in the acceptance of a transference of resources between rich and poor countries based on the idea that "Equality of power is conducive to the formation and elicitation of moral motivation". See Brian Barry, "Can States be Moral? International Morality and the Compliance Problem" in Brian Barry, Democracy, Power and Justice: Essays in Political Theory, page 431.

2.4) Concluding Remarks

One of the main merits of universalism lies in its pursuit of far-reaching internationally just principles that take into account not only individuals' access to basic human rights but socio-economic factors that affect the full enjoyment of these rights and make it possible for them to become functioning moral agents . Particularly, it puts into question the privileged access some countries have to natural resources and to the benefits of an interdependent international economic structure. And it vindicates a wide redistribution of resources among political communities as a way for them to properly perform their function in providing individuals with a suitable environment where they can constitute themselves as thinking autonomous entities and construct a common sense of identity.

Nonetheless I think universalists such as Beitz, Pogge and Barry fail when underestimating the role played by the political community in the constitution of morally motivated agents. They take for granted the universal rational capacities shared by individuals to define a functioning moral agent without paying attention to the fact that these capacities can only flourish through specific kinds of interaction that take place inside political communities. Even in a world characterised by an ongoing process of interdependence, bordered political communities still constitutively influence the formation of the individuals' identity and the way they act in the public domain, being it at a national or at an international level. In denying this fact, it exposes the gap between what is ideally desirable in the construction of just international principles and what is actually feasible given individuals' dependence on historically situated social structures.

It is obvious that the assignment of an ethically constitutive role to the political community still leaves open some questions. The most pressing one is to what extent the role performed by this community could signify an impairment of individuals' realisation of their independent critical thinking capacities. In this respect, more has to be said about what kind of links individuals' should maintain with this community as well as how a universal rationality that allows individuals to critically access the links and commitments derived from being a member of a society can be preserved. It is with

these specific concerns in mind that I turn to an analysis of the communitarian and nationalistic claims in the following chapter.

CHAPTER 3: Particularism

The particularist perspective here analysed encompasses the ensemble of communitarian' and nationalist' claims born as a critique of Rawls' individualistic presuppositions in a *Theory of Justice*. These claims are based on a critique of the methodological abstraction presupposed in the description of the "veil of ignorance", by which the individuals are supposed to abstract from their particular social circumstances and differentiated skills to deliberate about principles of justice. According to these critics, this kind of abstraction in the construction of a method is philosophically problematic. That is so because it underestimates the importance of social circumstances in making individuals' choices significant. It is as historically situated beings that individuals not only develop a perception of themselves and the goods that are meaningful to their lives but also acquire essential virtues, or character dispositions, that allow them to be morally motivated actors, able to abide by a system of rights.

Although the particularists' criticisms lead to a more incisive discussion of how an individual is in fact morally formed and becomes able to exercise practical reason, their framework of analysis proves rather restrictive when thinking about the deliberation of principles of justice. It is my claim that the particularists mistakenly emphasise the idea that communal feelings and attachments, which are not necessarily consciously grasped, are fundamental in informing individuals' sense of identity and ways of action in public. In doing so, they end by putting at risk individuals' ability to become a full moral agent, critically capable of understanding and assessing the role they are supposed to perform as agents in the construction of moral norms.

As a consequence of this supposition, the particularists tend to defend a merely formal (de facto) conception of citizenship instead of comprehending how its exercise can lead individuals to develop reflective public argument in a way that takes into consideration the others as independent sources of claims and at the same time as partners in the construction of a common good. In this last view, a morally responsible individual is born out of conscious awareness of the rules and their implications and not primarily out of a sense of connectedness. The constitution of an independent thinking and yet

engaged moral agent could help to pave the way to a new understanding of a process of deliberation of just principles at the international level, one that is less circumscribed to the arbitrary needs of a particular community and more centred in individuals' integrity and further development as a moral agent who is intrinsically able to exercise his abilities beyond the limits of a bordered political community.

The chapter is divided in three sections. The first section presents my general criticism of the particularists' supposition that a strong feeling of belonging, even at the expense of reflection, is a necessary element in the formation of an active moral agent and the maintenance of a stable and just system of rights. And it ends by succinctly showing the implications of this view to the understanding of the international deliberation of internationally just principles. The second and third parts illustrate my arguments against the particularist views. The second part analyses the works of communitarians such as MacIntyre and Walzer, which stress the social aspect of individuals' use of practical reasoning. While MacIntyre defends a more general and historic-tradition concept of practical reasoning, Walzer by concentrating on how social interactions determine the nature of the good reveals the influence of a socially determined use of practical reasoning in the definition of justice.¹²² The third analyses the claims of nationalists such as Miller and Tamir. Their works represent a philosophical attempt to defend nationalism as one of the main definers of a moral agent's identity and the factor sustaining political allegiances. Although Tamir tends to overemphasise consciousness in the formation of a nation, they both tend to agree that a national identity is the most efficient source of trust and loyalty necessary to substantiate, by offering moral motivation, a just social system.

3.1) Critical Issues in the Particularist Argument

For the particularists, the individual has to be understood primarily in his social dimension. He gets to know himself and develop his capacities for making

¹²² For a full explanation of why both MacIntyre and Walzer can be considered of the same theoretical family, see S. Mulhall & A. Swift, Liberals and Communitarians, pp. 161-162.

valuable choices in connection with the feelings of belonging developed as member of a historically situated society. The perception he has of himself is very much dependent on the sentiment of loyalty and trust that he shares with his compatriots. And the capacity to choose the course of his life – such as career, family organisation and lifestyle – is highly influenced by the kind of social values and roles that are asserted when being part of this specific social environment. It is as being part of this social context that he exercises practical reasoning, leading to the construction of a system of rights (the regulation of individuals' liberties). It is also in this condition that he strengthens his dispositions of character (civic virtues) and become a morally motivated agent, acting out of respect to the law and bearing the consequences of his actions.

There are nonetheless implicit limits in the development of particularists' arguments. For them, the individual develops his capacity of critical thinking under the auspices of a social environment that helps shape his identity (preferences, skills, social roles) and the way he acts. And this social environment guarantees its existence mainly through the formation of a sense of connection among individuals that is much founded on the subjective interpretation of reality. Social cohesion is here based on a blurred picture of reality. The existence of mechanisms provided to guarantee public discussion in the way to the formation of a *social imaginaire* avoiding any abuse in its manipulation has an intrinsic limit. It cannot offer incentives to individuals' exercise of their autonomous capacity of thinking since they can risk the sentiment of belonging that founds the social tissue and guarantees individuals' allegiance.

In this sense, individuals' identity tends to be in many ways defined away from their own conscious effort to grasp the very components that form it. The awareness of their personality and the relation it has with a social environment is truncated. There is a clear limit to the possibility of distancing themselves from the particular roles they are supposed to perform in a society and the attachments that shape membership in this society so as to understand and evaluate them. And this limitation is not related purely to the historically situated condition of man but to the basis upon which this socio-political order is supposed to rest.

The overall particularist understanding of individuals' formation of a common identity influences the way it perceives the political community and the role it should

play in the moral development of individuals. Communitarians and nationalists are against the neutrality of the state defended by liberals.¹²³ The state is not neutral in the managing of individuals' pursuit of their differentiated goods, as defended by liberals. It represents the greatest social good, communal life understood in its inclusive form as an essential ingredient of the good life. In this version, it is up to the state to maintain the strong social attachments that define membership and secure its legitimacy.

While individuals' sense of identity and ways of behaving are primarily developed in civil society, in the different relations and attachments that are formed through their participation in a variety of groups of civil society, the public sphere represents the arena in which these different interests and group attachments come to be formally represented and accommodated to maintain social cohesion. It is where I enjoy my citizenship rights, regarded here much more as a formal concept (to be equally represented) than a moral stage in individuals' development. Political participation is backed by the chains of social attachments that are formed so far as I grow up and can be appealed to in the name of social cohesion. It does not necessarily demand from individuals an autonomous effort to reciprocate actions under conditions of equality and to critically regard themselves as part of a whole that helps shape a common identity. That is so because such an autonomous effort is weakened by the sense of belonging developed in the civil society and reinforced in a discretionary way by public institutions. In this condition, my moral responsibilities are much more felt than backed by convincing reasons.

It is clear that this perception of the relation between the polity and its members has a limiting impact on the understanding of the international system and the process of deliberation of just principles among its members. As the main definers of common identities, the political communities are to be seen as the prime actors of the international system, and as giving priority to their interests in the preservation of the elements that sustain social cohesiveness. While not denying their compatriots the possibility of establishing meaningful relations with a distant other, the political community can nonetheless severely restrain such relations appealing to the subjective sense of belonging that primarily shapes their personalities and help to define political allegiances.

¹²³ On a more detailed discussion about state neutrality, *Ibid.*

At the level of a deliberation process of just principles, the political community's priorities will be felt in the way it rejects the understanding of this process as an opportunity for individuals to further exercise their moral abilities by independently and critically assessing with the help of distant others different interpretations of the good life. Political community will tend to agree on a thin version of international principles (minimum rules of co-existence), which mostly privileges a strict view of the self-determination principles over the reinforcement of clear international human rights principles that care for the integrity of a moral agent no matter where he lives.

3.2) Communitarian Thought in the Works of MacIntyre and Walzer

In general terms, communitarians such as MacIntyre and Walzer share the belief that the individual is only able to develop and exercise his capacity for practical reasoning in society. It is as a member of a historically situated community that individuals become able to apply reasoning so as to define their personal choices and the roles they are supposed to perform in the building up of a system of rights. Moreover, it is the sense of belonging gradually inculcated in the individual in this process of socialization that will offer meaning to the choices made and roles performed by him. Given this overall perception, the deliberation of just principles that offer form and content to the system of rights will be to a great extent influenced by the very same values that are characteristic of the social dynamic individuals are subjected to.

MacIntyre directs its criticism mainly against the liberal conception of the self. Persons must be regarded as partly constituted by their membership in a tradition, a specific grand historical and social narrative about how to live a good life, which is articulated with the help of cultural and linguistic elements. It is in relation to this tradition that individuals make rational decisions about how to pursue the good, learn to evaluate and criticise this pursuit and to interpret the good in question.¹²⁴ Therefore, individuals' sense of identity and integrity is constructed primarily through their engagement in a tradition.

¹²⁴ *Ibid.*, pp. 90-91.

As each tradition is defined by MacIntyre as a narrative among individuals living in a historically situated context, there is not one rationality but many, depending on how many traditions are available in the world. And the disagreements that appear in each and every culture reflect individuals' ultimately arbitrary differences in preferences and feelings as well as their particular attempts to influence one another whatever the means.¹²⁵

Following this argumentation, moral philosophy tends also to reflect the disagreements of a culture. According to the author, the incommensurable nature of the philosophers' premises turns moral philosophy into an endless attempt to alter the preferences of one another under the veil of impartiality. Past efforts made to reverse this tendency, by offering a rational justification to moral rules and norms, have failed. The Enlightenment project exposed the impossibility of appealing to absolute forms of reasoning on moral issues that abstract from historical contexts, determining the final fate of both moral philosophy and government. Moral philosophy becomes a tool to impose liberal preferences under the pretension of rational thought, while the government becomes an instrument to impose a set of rules through a bureaucratic unity on a society that lacks consensus.¹²⁶

What is striking in MacIntyre's argumentation is the intrinsic limitation on individuals' autonomous thinking supposed by the conception of an emotivist self and its relation with a tradition. My particular choices are the reflection of an ultimately arbitrary will, which are open to manipulation in the social relations I take part in.¹²⁷ What gives some homogeneity and direction to this particular will and the other ones that I relate to are the mechanisms envisaged in the construction of a tradition's narrative that makes me feel part of a specific community sharing language, cultural traits and history. It comes with the centralisation function assumed by the state as well as the theoretical explanations proposed by philosophers that reflect the spirit of a tradition. In both cases, the biased control of subjective elements involved in the construction of such a tradition can be seen as constitutive of their function, a valid form in obtaining social cohesion.

¹²⁵ Alasdair MacIntyre, *Whose Justice? Which Rationality?* (London, Duckworth, 1988), pp. 1-12.

¹²⁶ Alasdair MacIntyre, *After Virtue: A Study in Moral Theory*, (London, Duckworth, 1985), pp. 6-36.

¹²⁷ For MacIntyre, the social content of emotivism entails in fact "the obliteration of any genuine distinction between manipulative and non-manipulative social relations". *Ibid.*, p. 23.

Such an argumentation assumes that the feelings giving unity to the tradition can occupy the space left empty by the incongruities of an emotivist self. Coherence, stability and meaningful purpose in individuals' lives and the relations they establish can be attained by a sense of belonging developed in the build up of a common historical and cultural narrative. But the point is that in the construction of such a narrative the individual's capacity for distancing himself and critically assessing the elements that define it is necessarily restricted in the name of social cohesion. Individuals have to see themselves much more as part of a tradition, with the performance of social roles that cannot be easily contested, than as someone who is consciously aware of his identity and how his participation in the construction of a common narrative affects this identity.

MacIntyre's thought on the construction of a moral agent illustrates the point. For him, morality is related to the social roles individuals are supposed to perform inside a tradition. Though not defining ultimate moral conduct, social roles demand from their performers a certain attitude towards life, which serves to put pressure on their behaviour and to provide a culture with moral definitions by means of examples.¹²⁸ According to this understanding, moral conduct is much more dependent on the following of examples, of what is already established as part of a role, than the individuals' conscious effort to relate to each other as autonomous sources of equally valid claims in the construction of a system of rights.

Moral learning is therefore mostly defined socially. Though the exercise of citizenship is considered in the construction of a moral agent in MacIntyre's scheme, individuals' attitudes towards the public are more linked to the kind of values inculcated in them when they grow up. The public roles individuals assume are largely interpreted as an extension of their private inclinations and vice-versa.¹²⁹ The tension between being an individual with private concerns and someone who exercises a public role is here suppressed.

In my view, the suppression of the tension between private and public spheres is done to the detriment of the individual. The tension, rather than being an inconvenience

¹²⁸*Ibid.*, p.31.

¹²⁹ The Aristotelian ideal of society defended by MacIntyre seems to imply such a straight connection between individuals' private and public spheres of concern. See *Ibid.*, pp. 256-264. See also S. Mulhall & A. Swift, *Liberals and Communitarians*, p. 81.

in the formation of a moral agent, can be regarded as individuals' opportunity to develop independent thinking, leading them naturally to question the elements involved in the construction of a common identity as well as the importance of their participation in the definition of a social order.

MacIntyre's understanding of the formation of a moral agent has a direct impact on the way he comprehends the international system and its dynamics. If the plurality of traditions implies a plurality of practical-rationalities and justices, to get to know the distant other is only possible superficially.¹³⁰ Individuals' interactions could be marked by tolerance of the different backgrounds they inherit. It could even lead to the eventual exchange of determinate experiences but it would hardly represent an exchange of independent viewpoints aiming at the understanding of the values inherent in the demands of their social roles. To do so, it would have to imply that I grow up in more than one tradition. Alternatively, it would have to imply that individuals can distance themselves from their own tradition, even if temporarily and partially, to really become open to others' claims. While the first option can be thinkable in MacIntyre's scheme, eventually opening the way to the possibility of independent thinking, the last one hardly constitutes an alternative at all.

Given the perception that a moral agent's capacity of independent critical thinking and of open interactions with outsiders is constrained by his immersion in a tradition, the emergence of a genuinely universal order is unlikely. As MacIntyre emphasises, it is relegated to become "a philosopher's project", based on the false belief that all can be potentially translucent to understanding. The only kind of long term agreement that can actually be established among the representatives of individuals (political communities) in the process of international deliberation is the one that guarantees the existence of a plurality of traditions and defines minimum rules of coexistence. These rules are, even according to MacIntyre, considered far too thin and meagre to supply what is needed to secure individuals' integrity.¹³¹

In contrast to MacIntyre, Walzer concentrates his analysis on the perception of the good in order to criticise liberals' individualistic approach and define his communitarian

¹³⁰ Alasdair MacIntyre, *Whose Justice? Which Rationality?*, p. 346.

¹³¹ *Ibid.*, p.334.

“pedigree”. His maxim is that distributive justice principles are good-specific. And good-specific principles must be culture-specific. In other words, the objects of justice are goods that have different social meanings and values, depending on the cultural and historical environment in which they were generated. And since the goods are mostly defined through social processes, they should be distributed for different reasons, much in accordance with what different kinds of people perceive to be their need.¹³² This maxim rests on the assumption that the most important social good, one that directs and informs other ones, is individuals’ membership in a community of character. A community of character is the one marked by a cultural distinctiveness that people attach an intrinsic value to. It can also be understood as a national “family” when compared with other forms of association.¹³³

The emphasis on membership of a community of character, which is the political expression of a common life and a national “family” united by feelings of relatedness and mutuality, seems to open the way to social determinism. If individuals’ autonomy is the basis of the constitution of conscious moral agents, will it not be jeopardised by the role exercised by community in shaping individuals’ perception of values and choices? In principle, Walzer refutes such a hypothesis by discussing the role of social criticism - expressed in his conception of philosophy, and through the mechanisms able to canalize such criticism in the making of a political community –linked to the plurality of groups in civil society and individuals’ exercise of citizenship.

For Walzer, philosophy serves as an instrument to articulate the elements that give meaning to a community of character. No matter how far the philosopher establishes links with the outside, it is basically an exercise inside a culture. The subject of work is the co-ordination of the different viewpoints forming part of a historically situated community and the production of a unity to them. As it involves an internal analysis, it is more than just a philosopher’s affair. It is also indirectly an analytical

¹³² The argument leads to the notion of complex equality, different distributional spheres for different kinds of goods. See Michael Walzer, *Spheres of Justice: A Defense of Pluralism and Equality* (United States of America, Basic Books, 1983), pp. 6-10.

¹³³ *Ibid.*, Chapter on Membership, p. 42. See also Mulhall who describes Walzer’s notion of membership as a repository of values. S. Mulhall & A. Swift, *Liberals and Communitarians*, p.123.

exercise taken by persons who, in the daily exercise of their professions, feel the need to reflect and engage in conversation with others about the meaning of the good life.¹³⁴

What is important to underline in Walzer's perception of social criticism is the way it is based mainly on internal arguments defined in subjective terms. According to him:

[...social criticism is less the practical offspring of scientific knowledge than the educated cousin of common complaint. We become critics naturally, as it were, by elaborating on existing moralities and telling stories about a society more just than, though never entirely different from, our own.]¹³⁵

In these terms, a critical appraisal of a subject is defined by individuals, who having a sense of relatedness, tell stories to each other about their different perceptions of reality. Therefore, there is no impartial standpoint as there is no way to define the definite or best story. Social meaning is loose and interminably subject to interpretation.

Given the plurality and subjectivity of interpretations, it could be said that a long lasting consensus for Walzer is dependent on relatedness and the feeling of connection that is present among the members of the society. In this case, individuals' ability to exercise critical thinking is implicitly restrained. The individual's analysis of what gives social meaning to a common good and offers him some value in the construction of his personality presupposes, at the end of the day, an existing strong sense of belonging to a group. This sense of belonging tends, as in MacIntyre's analysis, to be much more related to the historically consolidated sum of common interpretations of realities than to the conscious effort to understand what is involved in the making of a common identity.

In an attempt to downplay the implications of assuming relatedness as the basis for individuals' actions, which involves the possibility of the distorted use of such a sense of belonging by the community's representatives, Walzer discusses in a later work mechanisms able to guarantee individuals' sphere of autonomy. The right of individuals to join voluntary associations (institutions of civil society) and exercise citizenship (political participation) is seen by him as forms for maintaining the focus of toleration in the individuals and not in any arbitrary power of a group.¹³⁶ As participants in voluntary associations, they are able to choose with whom they mostly want to identify and to

¹³⁴ Michael Walzer, *Interpretation and Social Criticism* (London, Harvard University Press, 1987), pp. 35-40.

¹³⁵ *Ibid.*, 1987, p. 65.

¹³⁶ Michael Walzer, *On Toleration*, (United States of America, Yale University Press, 1997), pp. 24-26.

develop a close relationship. As citizen, they have the opportunity to relate to each other autonomously and on equal terms.

In my understanding, this attempt is doomed to fail given the fact that both mechanisms are still conceived on the basis of a very constrained possibility of individuals' self-acknowledgement. Though it presupposes the plurality of viewpoints, yet the element that gives direction to individuals' participation in civil and political institutions is still an ill-defined sense of belonging. Acting either as a member of a religious group or as a citizen, it seems that I am still primarily guided by the subjective links established with the members of the national family I am part of. And individuals' consciousness of the elements forming this sense of belonging is not a pre-requisite to participation in both these groups.

Such a dispensable character of consciousness in the exercise of citizenship is particularly problematic when analysing the effect on morality. I here come back to the point I made about MacIntyre's work. My participation in an exercise of reciprocating actions and in the construction of a whole is done without a clear understanding of what is really at stake. I take decisions and reciprocate actions not necessarily because I can clearly take the other as an end and identify with him but because I am used to seeing him in a specific form, as a member of a national family.

In terms of moral learning, I am not necessarily taking the other as an independent being who needs to have his integrity respected so as to become a competent interlocutor. I see the other as someone who I care for. In this context, my moral obligations are not to be founded on the objective appraisal of individuals' need but on the sentimental links that found our relationship.

As in MacIntyre's case, the implications of Walzer's scheme to the understanding of an international deliberation process ends up as a mere reflection of the central role played by community in the construction of a common identity rather than being an exploration of its dynamic role in individuals' moral learning. He defends the plurality of communities, as they are all equally producers of culture. And he also offers the individuals an international dimension in the sense that they can extract some learning from contact with these different cultures. But there is a limit to the relationship between compatriots and non-compatriots. Individuals are essentially autonomous beings within

the auspices of a historically situated community, membership in these communities being the principal social good that these individuals are attached to. Contact with the external world will always be significantly constrained by such a perception of the primordial value of communal attachments.

In these terms, international agreements can only be conceived on a thin version of principles, described as a moral minimum. This minimum is understood in terms of common principles and rules that are similar to various systems of rights though representing expressions of different views about the world.¹³⁷ It should lead to a certain degree of solidarity among the parties since the notion of individuals' fundamental need is acknowledged as part of this minimum, such as in the case of refugees. But it would far from express a full universal doctrine.¹³⁸ The discretionary power of communities should be maintained for the sake of the national character that determines the distinctiveness of a culture. Therefore the right to analyse and create restrictions to minimise the impact of an international agreement on a culture remains a feature of a community's self-determination.¹³⁹

3.3) Nationalism according to Miller and Tamir

In contrast to the communitarians, nationalists such as Miller and Tamir make a stronger claim about the source of trust and loyalty necessary to substantiate a just social system. Both authors search for a philosophical defence of nationality, seen as the founding element of an ethical community. They ground their *philosophical* defence on a criticism of the abstract and unrealistic account of individuals and moral motivation found in studies about justice in contemporary thought. National identities have to be acknowledged as the most efficient source of solidarity that helps solidifying redistributive regimes. By being born inside a national community and assuming different social roles, individuals develop special links to their compatriots that are

¹³⁷ Michael Walzer, Thick and Thin: Moral Argument at Home and Abroad (London, University of Notre Dame Press, 1994), p. 17.

¹³⁸ Ibid., p. 07 and p. 11.

¹³⁹ Michael Walzer, Spheres of Justice: A Defense of Pluralism and Equality, p. 51.

constitutive of their moral agency, such as reciprocity, loyalty and care, thereby learning to respect the rights and duties they primarily hold towards each other.

For Miller, nationality involves five dimensions.¹⁴⁰ First, it is based on *the belief* that a group of individuals belongs together and intends to stay together (reciprocal commitments). Second, it implies historical continuity. It means that individuals are able to identify with past events and heroes that helped in constructing the nation. Such identification makes the community something that not only stretches back and forward across generations but also cannot be renounced by present generations. Third, nationality involves an active dimension, meaning that individuals do want to do things together. They have a pre-disposition to engage in social life, making collective decisions and holding responsibility for these decisions. Fourth, national communities should, in ideal terms, be identified with political communities that aspire to have a legitimate authority over individuals living in a limited territory.¹⁴¹ The political community serves here to formalise social attachments, individuals' desire to live together, to co-operate and take responsibility for their actions. In other words, Miller is admitting that the effectiveness of solidarity links partially depends on the existence of an authority over individuals living in a limited space. But also the fact that the public sphere serves to give a framework to their social attachments, bestows on them a sense of articulation and unity.¹⁴² Political community reflects in a broader way the cultural and social ideals that are shared by individuals in a context. Fifth, nationality is marked by a distinct public culture. This culture expresses how a group of people conducts life together and offers them uniqueness. In this sense, it involves political principles, social norms and cultural ideals that range, for example, from religious beliefs to the defence of the purity of language.¹⁴³

In my view, the subjective dimension of nationality paves the way to the proper understanding of how individuals can exercise critical thinking in Miller's scheme. The

¹⁴⁰ See David Miller, *On Nationality* (Oxford, Oxford University Press, 1997), Chapter on National Identity.

¹⁴¹ See *Ibid.*, p. 24.

¹⁴² This comment seems to depend on the assumption that, in practical terms, individuals are themselves limited beings. They better identify with others if their spectrum of relations can be seen as limited or bounded by something.

¹⁴³ *Ibid.*, page 26.

first dimension, involving shared beliefs, raises a well-pointed objection in the literature. In order to become members of a community, individuals have to share common values and learn to respect common rules and authority. The stress on heroes and the common interpretation of past events in the construction of these common values can nonetheless have disturbing consequences for moral agency. The notion of belonging will be here based on true beliefs, facts that actually happened, as well as on false ones, imaginary events and personages constructed in a selective way so as to create a collective memory.¹⁴⁴ Given these mixed beliefs and the fact that the driving force of common life becomes sentimental attachments constructed on the basis of biased interpretations of reality, the appraisal of individual's notion of belonging and how it affects our relationship with others could become not only difficult but also unproductive. The risk of falling into a subjectivist position will be very great.

The second dimension, the extension of shared beliefs over history (historical continuity) also brings some latent problems to Miller's scheme. By emphasising this component of nationality, Miller makes unlikely the idea that ethical communities are open to change as well as to the reception of broad forms of criticism arising from the interactions established with outsiders. Individuals who do not share our history are not necessarily assimilated in our community. This poor notion of individuals' interactions has certainly a disturbing effect on individuals' construction and critical assessment of their identity.

The author defends himself from the above accusations by suggesting in the presentation of the third and fifth dimensions of nationality that the beliefs can always be critically assessed in potential terms. The values and principles grounding the public culture can always be assessed by the various sub-cultures forming the society. And to prove that public culture is not an all embracing concept, Miller even envisages mechanisms to guarantee individuals' fundamental rights and to permit change. In these terms, individuals' freedom of conscience and expression should be protected as a form of preserving individuals' capacity for developing critical thinking.¹⁴⁵ Moreover, the

¹⁴⁴ Concerning this subject, see the discussion in the last chapter ("Memory and Forgetting") of B. Anderson, *Imagined Communities* (London, Verso, 1991).

¹⁴⁵ David Miller, *On Nationality*, page 123.

right of refugees should be acknowledged as a form of exploring different interpretations of national identity. There is here an admission that national identity does not depend exclusively on individuals' deference to established institutions or myths that sustain it. All that is needed is to ask of immigrants that they have "a willingness to accept current political structures and to engage in dialogue with the host community so that a new common identity can be forged."¹⁴⁶

I think Miller's defence does not however supplant the vagueness present in the construction of a national character. As he admits, nationality should involve more than just *de facto* citizenship. It trespasses on ethnic concerns and cultural issues that are not clearly or formally defined.¹⁴⁷ While it expresses the uniqueness of a society, the concept does not incorporate sufficiently objective elements for us to apprehend its significance. To some extent, its broad and indeterminate character is intentional. It offers a blurred picture of reality, one that is flexible enough to facilitate social cohesion while rendering more difficult individuals' conscious political participation.

The admission of cultural pluralism in the process of constructing this public culture far from diminishing the problem of conscious political participation in Miller's scheme by offering a plurality of viewpoints, adds to its unarticulated character. The participation of different groups in the political sphere is not clearly defined. There is no way of assessing what a cultural group means as well as how one group's demands can prevail over another. The lack of criterion defining groups and the kind of relationship essential among them means that there is a real possibility that individuals' demands be lost or unconsidered in the construction of a common culture.

In my understanding, the efficiency of a public debate in the construction of a common culture much depends on the political environment's capacity for offering incentives to its members to exercise critical thinking while making available mechanisms to absorb these criticisms. The general and subjective character of the public culture defended by Miller would nonetheless make difficult the existence of

¹⁴⁶ *Ibid.*, page 130. Sentence underlined by me.

¹⁴⁷ For Miller, it is "almost inevitable that there will be areas in which nationality *does* trespass on ethnicity and the fostering of national identity will require the curtailment of certain aspects of ethnic identity in the interests of creating and maintaining a common public culture. The extent of the trespass will depend on the particular national identity in question." David Miller, "The Ethical Significance of Nationality" in *Ethics*, 98, July 1988, page 657.

effective institutions and practices that help individuals to articulate and conduct autonomous forms of criticism. That happens because nationalists have, in a much stronger way than the communitarians, to ground the existence of a public culture ultimately on what Callan describes as a civic sentimental education, responsible for the construction of politicised fictions of the moral purity of a nation that simplify reality and make the choices less difficult.¹⁴⁸ By doing that they are able to manage the elements in the construction of a common identity and to secure social cohesion. But at the same time, they make unlikely individuals' clear understanding and assessment of the choices available to them in the process of deliberation as well as the kind of values that permeate social institutions and yet influence their lives.

Miller's form of understanding the construction of a public culture has an immense impact on moral issues. Individuals' moral obligations to each other would again tend to be strongly felt but not clearly comprehended since they are based on the vague and yet all-encompassing notion of preservation of a national identity. A clear standard to assess a claim-right, derived from individuals' effort to establish a relationship of reciprocity on the basis of equally valid autonomous claims, would be missing. Moreover, individuals' ability to be motivated, to act responsibly, to promote the common good (civic virtues) would tend to be exercised in a passive manner, not necessarily derived from a process of reflection that would culminate in a conception of the common good as in congruence with their own specific interests.

The impact of Miller's scheme on the perception of an international system and its process of deliberation can prove disturbing. The national approach seems to offer few elements to sustain the idea that individuals while forming part of specific

¹⁴⁸ According to Callan, "in order to insulate politicised fictions of moral purity from ready falsification, the historical imagination must be truncated in ways that blind us to the possible values that were rejected in the choices not taken, and this will tend to blind us to the contemporary relevance of those same values. This is a liability that sentimental civic education must incur, irrespective of the particular values it is made to subserve.

Second, the simplification of reality necessary to fictions of moral purity will remain precarious at best unless judgments that relate even indirectly to the object of emotion undergo a supportive simplification...

Third, sentimental civil education will tend to be conservative in a sense that even conservatives should find troubling. The fiction of moral purity is eroded so far as we acknowledge any defect in the political accomplishment or at least the political vision, of those who belong in the pantheon, and so to resist erosion it becomes necessary to deny or palliate any defect." In Eamonn Callan, Creating Citizens: Political Education and Liberal Democracy (Oxford, Clarendon Press, pp. 107-108).

communities can effectively enlarge their present sense of identity or construct new ones towards outsiders. Its theoretical framework tends to defend a notion of community that has the potentiality to be quite closed, insisting on the prominence of national identification and offering unclear internal mechanisms by which the individual can think critically about his social attachments and forge meaningful links to outsiders.

As a consequence, the discussion on international justice will tend to be mainly guided by the simple dichotomy between nationals and non-nationals, failing to explore the richness of elements existing in the relationship between them and how it can contribute to their moral development. An illustration is Miller's understanding of the process of deliberation of just principles, particularly the unsolved balance between a community's self-determination (principles defining the relation among nations) and the defence of basic human rights (principles that secure the relation between human beings in general). Self-determination is defended as the general principle of international justice since it represents the best political condition for securing national identities. So far as possible the boundaries of nations and states should coincide because:

[Where a nation is politically autonomous, it is able to implement a scheme of social justice; it can protect and foster its common culture; and its members are to a greater or lesser extent able collectively to determine its common destiny. Where the citizens of a state are also compatriots, the mutual trust that this engenders makes it more likely that they will be able to solve collective action problems, to support redistributive principles of justice, and to practise deliberative forms of democracy.]¹⁴⁹

Following this principle, the relation between nation-states should be based on non-interference (states should abstain from harming and exploiting other states as well as comply with international treaties) and aid (reciprocity and ensuring a fair distribution of resources among political communities).

The emphasis on self-determination leads to a set of questions related to the moral standing of individuals living in other societies. For example, to what extent should they be treated merely as the nationals of another political community or as human beings who should equally be regarded as ends themselves? Although Miller grounds his interpretation of basic human rights in "the feeling of sympathy" that individuals have towards the great suffering of others, he does not clarify to what extent this feeling implies a defence of a common moral standing of individuals living in

¹⁴⁹ David Miller, *On Nationality*, page 98.

different societies. As each society develops its own notion of need, based on a particular context, any agreement on a list of basic human rights, which distances itself from the fundamental level (starvation), could be regarded as biased and, in a more radical sense, as an instrument of domination. Even if an agreement could be reached among societies sharing similar values regarding the fundamental needs of a person for the enjoyment of a meaningful life, there is no guarantee that it will be implemented or become effective beyond national borders.¹⁵⁰ Giving our attachments to compatriots and their impact on a re-distributive regime, human rights should be first defended at home and then abroad. Moreover, any attempt to apply the principle of basic human rights abroad should be weighted against what specific communities understand to be their social priorities.¹⁵¹

Given the above considerations, what is left to non-compatriots? Despite his reference to the relief of starvation, Miller does not present a clear criterion to define what should be regarded as priorities among individuals living in different communities and to what extent these priorities can justifiably trump the obligations compatriots have towards their fellows. The relations towards less fortunate foreigners seem to be defined by the treaties already signed by the states (state-state relation) or by occasional unilateral acts.

Miller's insistence on the dichotomy between nationals and non-nationals as the basis of reflection about international principles is also to be found in his recent discussion about transnational citizenship. According to him, bounded citizenship, understood in congruence with national character, should be preferred as the form for individuals to develop their capacity to reciprocate commitments and form communal ties – trustful relationships, which are a necessary condition to the existence of a stable system of rights and duties. It is only when exercising civic virtue nationally that

¹⁵⁰ Human rights is here understood in a positive sense, including for example access to basic resources to pursue any set of aims, obligation to ensure that food, medical aid and so forth are available, as well as in a negative way, not to treat people in certain ways. See David Miller, Citizenship and National Identity (Oxford, Polity Press, 2000), p. 174.

¹⁵¹ I have still to develop the arguments linking nationality to human rights. This last paragraph is only indicative of how I will deal with the subject. Miller's understanding of the obligations nationals have towards foreigners as benevolent treatment is implicit in David Miller, On Nationality, chapter 3 and David Miller, "The Limits of Cosmopolitan Justice" in David Mapel & Terry Nardin, International Society Diverse Ethical Perspectives.

individuals become able to discuss meaningful relationships to outsiders, opening the way to the possibility of transnational citizenship. As Miller says:

[The main point is that such possibilities for transnational citizenship as may exist depend upon first strengthening citizenship and inculcating civic virtue within national boundaries, and then hoping that these qualities may carry across to wider constituencies.]¹⁵²

However promising, Miller's arguments constitute an intrinsic limitation, derived from the link established between citizenship and civic virtue, for understanding and enlarging individuals' level of moral obligation. For him, civic virtue is not devoid of the subjective and ethnic considerations that impair individuals' proper exercise of their autonomy, including their ability to enrich their sense of identity and to acquire extensive civic self-knowledge. Consequently, the qualities and values that individuals may try to stress in their relations towards non-compatriots will not necessarily be the same as the ones reinforced at home. Tolerance, for example, will not necessarily be derived from this environment and translated to an international scenario. In fact, the opposite attitude is more likely to emerge, in detriment of the enhancement of international relations. The other problem is the passive attitude assumed by this kind of statement. There seems to be no intention of treating the international scenario, including in this case treaties, conventions and organizations, as another arena where new forms of individuals' expression of their identity are systematically explored and given voice in order to serve as a counter-point to the national dimension. Rather than a dimension to be explored, the international level of moral obligations is something to be seen as merely derivative of the demands of a national community - reinforcing a non-compromising attitude towards non-compatriots.

Like Miller, Tamir sees as necessary and possible a philosophical defence of nationalism in liberal states, one that is based on a normative claim about the plurality of nations and includes a set of prescriptive claims related to the means necessary to secure a national world order as well as the welfare of each particular nation. It is however doubtful whether she can be more successful than Miller in constructing a philosophical defence of nationalism, one that reaffirms the significance of a national consciousness

¹⁵² David Miller, Citizenship and National Identity, page 95.

while offering the individuals a background for meaningful choices and social evaluation that does not put at risk their autonomy.¹⁵³

Tamir is primarily concerned with the malaise of our time, “the atomism, neurosis, and alienation that inflict liberal states and may leave them defenseless”. For her, equality and freedom are too thin concepts to offer individuals a sense of common purpose and commitment. She searches for a new meaning to social contract, not regarded anymore just as a means to protect individual interests but also as a means to meet the need for roots, for stability, for a place in a continuum that links the past with the future.¹⁵⁴ The remedy is presented in the form of nationalism, seen as tool the state can use to restructure the political community, offering the citizens a stable and continuous national identity. It is through this national identity that individuals build up their self-esteem and give significance to their actions, learning to identify themselves with the needs and values of the nation.¹⁵⁵

But the force of Tamir’s argument depends on how accurately nationality can be defined in the construction of individuals’ personalities and hence related to the functioning of a liberal public domain. In other words, it depends on to what extent the existence of a national culture constricts the individuals’ autonomous exercise of their critical capacities, affecting their conscious enjoyment of their right to citizenship as well as their conscious perception of moral obligations.

¹⁵³ Many normative claims based on the instrumentality of nations to individuals’ development can be thought about according to Tamir. For example, membership in a national community can offer a background for strong evaluation and choice, self-development and self-expression and most importantly, self-esteem. It can also lead to a better understanding and cooperation among members, strengthening their sense of mutual responsibilities over generations. I will be touching on all these issues when discussing Tamir’s framework. Yael Tamir, “Theoretical Difficulties in the Study of Nationalism” in Rethinking Nationalism (Calgary, Canada, University of Calgary Press, 1998), p. 86.

¹⁵⁴ Explaining the usefulness of nationalism, Tamir says: “But why should the insertion of nationalistic ideals and images influence the citizens’ preferences and choices? The answer has to do with the ability of the nationalist way of thinking to transform the self-image of individuals by portraying their personal welfare as closely tied to its ability to contextualize human actions, making them part of a continuous creative effort whereby the national community is made and remade. By so doing, nationalism imparts special significance to even the most mundane actions and endows individuals lives with meaning. It is in this sense that nationalism bestows extra merit on social, cultural, or political acts and provides individuals with additional channels for self-fulfillment that make their lives more rewarding “ Yael Tamir, “Pro Patria Mori! Death and the State” in R. McKim & J. McMahan, The Morality of Nationalism (Oxford, Oxford University Press, 1997), p. 232.

¹⁵⁵ Yael Tamir., Liberal Nationalism (Princeton, Princeton University Press, 1995), p.85.

The author admits that the defence of nationality involves an unclear balance between objective and subjective elements. To be a national is to share a national consciousness. On one hand, it involves features such as to live in a demarcated territory as well as ethnic characteristics in some cases. On the other hand, it encompasses, as the author describes, “a self-awareness of distinctiveness”. Individuals feel they want to belong together, sharing conciliatory aims and feelings with one another. They want to be part of a distinct culture, which gives them a unique identity. And for that, they are supposed not only to express their objective will to validate the arrangement but also to participate in the creation and maintenance of myths, ideals and symbols that sustain common beliefs and the common desire to be part of a nation. Given such a voluntary character, it is almost impossible to distinguish between nations and other cultural groups. As Tamir admits, if one group that shares some national characteristics defines itself as a nation, it “ought” to be seen as one.¹⁵⁶

A fundamental question remains, however, to be answered. What is precisely the space for critical thinking in this scheme? Though the individual perceives that his life becomes more meaningful in community, gradually learning to take some pleasure and pride from the achievement of other members and develops a strong sense of responsibility towards the others, membership in a state is not for Tamir to be derived from a conscious process of reflection. For her, individuals are constantly able to review the concept of the national community they are attached to as well as to understand its importance to their lives. At the limit, nationality has to be conceived as an object of choice in a liberal multicultural society. Membership in a national community is an individual’s right.¹⁵⁷ In the exercise of citizenship, they are able to form part of a cross-culture debate among members of different nations in a sphere where impartiality and respect for the law is prevalent.¹⁵⁸ Individuals’ capacity for reviewing the tacit choices

¹⁵⁶ *Ibid.*, page 68.

¹⁵⁷ This idea is connected to her concept of national self-determination. It should be pursued as a strategy to give voice to cultural diversity. In a broad sense, self-determination may range from the recognition of a voice in the public sphere of a political community to the possibility of opting for new political arrangements when this recognition is made unlikely. This notion has little to do with civil rights or political participation, the formal concept of citizenship. It is more connected to the idea of recognition – search for status. It involves a sense of familiarity or even identification with the rulers. *Ibid.*, page 96.

¹⁵⁸ *Ibid.*, p. 54.

made in the course of their growing up is preserved in the contact with different viewpoints.

It seems that Tamir advocates in these terms a balance between nationalistic feelings and impartial concern so as to sustain a social order in which individuals' exercise of autonomy can be maintained. My national affiliation, which influences the constitution of my identity, comes to be seen as an object of choice that has to be represented in the public sphere where impartiality is preponderant. In turn, the public sphere, the place in which rights and obligations are defined, gets its backing in those national sentiments that are developed in civil society. Its decisions though based on impartial considerations are informed by the main values defended by the various national groups represented.

I think however that the argumentation here presented is not as persuasive as Tamir would like it to be. If nationalism is to perform the function it is supposed to perform, creating a strong identification among its members, individuals' capacity for reflection should be somehow truncated. Let me develop my point. According to Tamir's scheme, my identity is largely defined by the national group I am part of. As illustrated by her use of the expression "true lies" in a recent study, this nationality is partially subjectively constituted.¹⁵⁹ The creation of true lies, a social imaginary that emphasizes common aspects among members, simplifies the choices faced by them and encourages them to act promptly in the name of the state. It is false because it is based on a biased interpretation of reality. It is true because the object is still linked to reality and its interpretation serves a well-defined function that can be tacitly accepted by nationals, to maintain a sense of cohesion among them. Moreover, the liar, in whatever form he assumes, can be identified as one of them. In these terms, there is an implicit admission that the national sentiment is an object of manipulation. And therefore, individuals' capacity for critically reflecting about the elements that constitute this identity can, and in many cases should, be curtailed for the sake of this state unity.

In the interpretation proposed by Tamir, the state is restructuring the perception by individuals of their participation in a political community. The exercise of citizenship,

¹⁵⁹ Yael Tamir, "Reconstructing the Landscape of Imagination" in Simon Caney, D. George & Peter Jones (eds.), National Rights, International Obligations, (United States of America, Westview Press, 1996), p. 229.

though formally guaranteed by rights that emphasise plurality of opinions and impartiality, is informed by nationalistic feelings that are open to manipulation. And in appealing to these nationalistic feelings, Tamir is downplaying its moral significance. Citizenship is far from being regarded as an exercise in reciprocity between autonomous members in the construction of a whole that is meaningful from the standpoint of a common identity. It becomes much more the formal enjoyment of political rights, one that is in fact sustained by sentimental ties that are reiterated in the build-up of nationalism and subject to manipulation in the name of social cohesion.¹⁶⁰

Moral obligations in Tamir's sense are also to be mediated by this national sentiment. Though responsibilities can be objects of reflection, the conscious discovery of one's position in the construction of the common sense of belonging, they are not necessarily viewed as such. They are mainly dependent on a sense of belonging and identification that is tacitly accepted by the individual as someone born into a tradition and living his life in accordance with it. In this sense, they are duties I have, given the fact that my compatriots, when taking part in the construction of a common identity, become objects of my affection.¹⁶¹

Although Tamir does not pay direct attention to the impact of her theoretical scheme on the understanding of the international context and the possibilities of the establishment of legitimate international principles of justice, I think much can be inferred in this respect from her views on difference (toleration). Tamir clearly expresses a determination to regard the dialogue between different cultures not only as a form of individuals' enrichment but also as a way of bringing more legitimacy to the current liberal state. Derived from the fact that individuals do have allegiances to different private associations and national groups that juxtapose each other at the national level as well to different supra-national arrangements, toleration becomes the first path to be taken in the construction of a cosmopolitan individual. And it can slowly pave the way for an active exchange of cultural experiences. This exchange in many ways can lead to an accommodation of diverse and sometimes conflicting demands among individuals,

¹⁶⁰ In relation to this point it is worth pointing to what Tamir says about the true essence of associative obligations: "they are not grounded on consent, reciprocity, or gratitude but rather on a feeling of belonging and connectedness". Yael Tamir, *Liberal Nationalism*, p. 137.

¹⁶¹ *Ibid.*, pp. 134-135.

which help legitimise the existence of a multicultural state, as exemplified by liberal ones. And internationally, it can help to sustain an order based on a self-determination principle that legitimises the existence of a plurality of sovereign nation-states while preserving the possibility of general co-operative arrangements among them.¹⁶²

One of the main problems with this form of reasoning is, however, the fact that behind this notion of tolerance there is an assumption about different degrees of importance of certain allegiances, specifically the primordial role played by national ones in the construction of common identities. As Tamir admits, national ideas of belonging will be informing the political process. And there are no specific ways of assessing how impregnated by subjective criteria, and consequently open to manipulation these national ideals are and to what extent they will become an obstacle to a significant dialogue among compatriots as well as between compatriots and non-compatriots. These faults challenge the view that there is a necessary link between life in a pluralistic cultural environment and the development of feelings of tolerance that lead to an exchange of viewpoints and a more encompassing understanding of the international deliberation process of just principles.

3.4) Concluding Remarks

The above criticisms signal an inherent constraint in the argument of particularism, especially in the strong version proposed by nationalists such as Miller and Tamir. On the one hand, a communal or national identity should be regarded as a phenomenon that can be adaptable to respond to the demands of multicultural societies. And in this respect, it has to be something that is always in flux, able to change and adapt to the new challenges presented by its members and outsiders in the form of internal criticism. On the other hand, the possibility of processing new demands in the construction of such an identity is partially obstructed by the very idea that individuals should still distinguish themselves as a nation or a socially tight community – sharing

¹⁶² Concerning the derivation of a self-determination principle and the possibility of co-operative arrangement among the sovereign nation-states, see *Ibid.*, pp. 153-155.

particular characteristics that are not always rationally apprehensible or defensible, and therefore cannot be properly questioned.

The conflict between these two issues is latent and yet not solved. When particularists try to underline the first issue they end by emptying nationality of its real significance. If nationality can be questionable, changed, etc, and yet be impregnated with subjective criteria in its definition, it becomes less an efficient instrument for giving uniformity to the social tissue than one more issue over which individuals can dispute and seek to exercise power. And that could easily be made in detriment of compatriots' full awareness of the exercise of their autonomous capacities, including their active participation in the construction of a common identity through the enjoyment of citizenship.

Particularly in relation to this last point, I argued that there is an underestimation of the normative scope of the exercise of citizenship in these studies. By concentrating on communal affiliations and national feelings as necessary ingredients to substantiate the exercise of citizenship, they tend to disregard what citizenship (equal rights) really entails in the moral formation of individuals.

When participating in the public sphere as independent sources of valid claims looking forward to defining the basis of long lasting co-operation, individuals are invited to exercise critical thinking while learning to present reasonable arguments, reciprocate actions, reach compromises and bear the consequence of the common decisions taken. This ethical understanding of the relation between political communities and its members will have a considerable impact on the way individuals' interests are perceived and defended at the international level. Political communities will be much more willing to look for a more encompassing and sustainable understanding of international obligations, centred not only in their formal recognition as ethical units but also in the enforcement of international rights that guarantee the integrity of their citizens as active moral agents in an increasing interdependent world.

CHAPTER 4: Individual Autonomy and Political Community

Having critically reviewed the particularist and universalist positions in the contemporary debate of justice, I intend in the present chapter to summarise some of their claims and categorise them in two broader distinct groups, instrumental and constitutive views, referring to how individuals' common participation in a situated political community contribute to the formation of an actively motivated moral agent. Roughly, the first group considers the instrumental aspect of the relationship. Individuals engage in a political community mainly because it is regarded as an efficient way of promoting their liberties and welfare. The second group emphasises the nature of the relationship. In this case, the relationship among individuals in a polity is valued *per se*. It is defined by attachments that help to shape their notion of identity and the obligations they have towards each other.

The above summary and categorisation will pave the way to the construction of an alternative view, which I call the ethical view. I argue that this view is comparatively best suited to deliver a more balanced understanding of the relationship between individuality and political community. Having its roots in a contemporary interpretation of the Hegelian thought on *die Stittlichkeit*, this view regards the exercise of citizenship as a significant moral stage in individuals' lives. By forming part of a political community, they are able to develop independent critical thinking on an equal basis while contributing to the formulation and implementation of a historically situated system of rights. In this development, they become able to critically identify with the foundational elements of the public decisions, helping them to carry on their moral duties in a more responsible way.

It is important to observe however that individuals' identification with their political community's norms and values, which give them a sense of belonging, is made with the possibility of applying (independent) critical thinking in order to comprehend the role these attachments play in both giving backing to a social order and in helping

construct their individuality. In this understanding, the state exists so far as it encompasses a unified rationality that can be regularly scrutinized by its citizens. It is therefore responsible for providing mechanisms to sustain the conjoined exercise of their citizens' free will.

The chapter is divided into four sections. The first section presents the claims and drawbacks of a functional view, which stretches from Rawls' description of a closed society as part of the circumstances of justice in the first OP to cosmopolitan claims made by Gewirth and Barry. The second section critically assesses the claims of a constitutive view, exemplified by the discussion of communitarians and nationalists raised in chapter 3. The third section introduces the ethical view and analyses to what extent it can offer a more balanced account of the relationship between individual autonomy and political community. And finally, I present some concluding remarks.

4.1) The Instrumental View

The instrumental view represents the ensemble of viewpoints that understands that the exercise of individuals' rational abilities is carried on through a regulated social environment in which the reciprocation of actions can be guaranteed. But though depending on this environment to exercise their liberty, individuals are not seen as substantially affected by the social interactions in which they take part. They can easily distance themselves from their milieu to objectively scrutinise the terms of the social agreement. The political community plays in these terms a strategic role, establishing impersonal constraints to make co-existence possible and, when individuals' autonomy is put at risk, guaranteeing a fair distribution of resources among them. Special attachments have a place only as a variant in such a strategic role.

A first version of such an argument is presented by Rawls in *A Theory of Justice* when describing the circumstances of justice. He sees the political community as a closed system of co-operation for the mutual advantage of individuals. Every citizen who carries the burdens of providing for the common good is entitled to receive the benefits of the enterprise. Members relate to each other as contributors who have the common purpose of providing sustenance for a polity responsible for the guarantee of their basic

liberties and a fair distribution of resources.¹⁶³ By focusing on individuals' gains from their disposition to contribute to the collective good, this approach duly highlights the strategic rationale necessary to the construction of a political community. But it gives little account of the constitutive role the political community plays in the formation of a moral agency and how such a formation depends on a well-established and interconnected national and international environment to develop.

Let me develop the point. One could say that this version seems to imply a proportional relation between an individual's contribution to the provision of the public good and the benefits individuals can have as citizen of a polity. But given the diversity of human lives and the social circumstances surrounding them, it would be hard to stipulate the proportionality between the two terms. Comparatively to their efforts, there are necessarily people who profit more from the common goods being produced than others because of differences in intrinsic and socially acquired abilities. In all cases, individuals' abilities are determined by their inherited but variable genetic code. In other cases, the individual's ability to acknowledge and develop a skill is highly dependent on a familiar and specific social environment.

Even if a measurement system could be eventually conceived to determine the benefits a member of a political society can enjoy compared to their social input, it would not eliminate further problems derived from its application. The marginalisation of sectors of the society that can hardly contribute, because of severe cases of individuals' disability, comes to mind. Either they would be treated with no consideration at all or with very limited interest, having their possible role in society discarded or minimised. In this case, the legitimacy of political institutions and social arrangements that support imbalances in power would seem disputable from a liberal viewpoint. Considering the contemporary debate on moral luck, it would be counter-intuitive to punish individual bad luck and not choice.¹⁶⁴ Or, taking into account the broader theoretical debate on

¹⁶³ John Rawls, A Theory of Justice, pp. 126-128

¹⁶⁴ Ibid. Rawls argues that the distribution of natural inequalities is arbitrary and that everyone needs access to primary goods, including the right of effective political participation. Ronald Dworkin, "What is Equality? Part I: Equality of Welfare", Philosophy and Public Affairs, Vol. 10, No. 3, Summer 1981 and Ronald Dworkin, "What is Equality? Part II: Equality of Resources", Philosophy and Public Affairs. Dworkin will argue that inequalities should not be founded on brute luck in personal and impersonal resources.

morality, particularly the Kantian presupposition of treating each and every individual as an end, the categorisation of persons in terms of their capacity to offer social inputs could be considered rather odd.¹⁶⁵

Following the same kind of argument, the case of immigrants would also pose a problem. If the criterion of membership in a polity is based on the generation and receipt of benefits, why should compatriots be treated differently from the individuals that actively contribute to the co-operative system but are formally unable to influence its rules? The diverse role played by immigrants or expatriates in boosting the economic and social life in different societies should, following the logic of this approach, lead to a claim for rights of citizenship in these communities. But this logic is not so straightforward. Don't these individuals necessarily have the political will or the legal resources to be participants in the construction of the public dialogue of the communities they inhabit? By portraying the societies as closed systems of co-operation, this approach tends to support the view that immigrants and expatriates are current exceptions or anomalies to be ignored or avoided in the long run.

Even considering that this portrait is to be understood mainly as a heuristic device in Rawls' theory, it can still serve to defend a distorted picture of the challenges confronted by multicultural societies as well as the opportunities they tend to offer to individuals' moral formation nowadays.¹⁶⁶ For this version, no necessary incentive would be offered to the individual to develop his international dimension in terms of regarding a foreigner as someone who is worth knowing and forging meaningful relations with. The preservation of a closed understanding of society would much depend on the public control of the possibilities individuals have to stretch both the limits of their

¹⁶⁵ Immanuel Kant, "The Metaphysics of Morals" in Hans Reiss (ed.), Kant Political Writings (Cambridge, Cambridge University Press, 1991).

¹⁶⁶ Within Europe, many countries are feeling the need to re-address their immigration policies. Germany is currently reviewing its policy about working visas to immigrants coming from East Europe, in their great majority of Turkish origin, who though allowed to work and to form a family, are deprived of any political voice. The UK is also being forced to question its immigration policy because of the economic need to curb the shortage of staff in priority areas such as education, health and computing services as well as the need to cope with clashes among its members who, having differences of ethnicity or religious beliefs, are facing increasing social prejudice. In theoretical terms, the debate is carried forward by authors such as Kymlicka, who has much contributed to address the issue of citizenship in multicultural societies. Will Kymlicka, Multicultural Citizenship, (Oxford, Oxford University Press, 1994) and Will Kymlicka, & W. Norman., Citizenship in Diverse Societies (Oxford, Oxford University Press, 2000).

creativity and their critical capacities through contacts with foreigners. A clear perception of how their identity could be otherwise constructed would be here denied.

Though the consequences derived from the assumption of proportionality in a closed system of co-operation can be further explored to back my general claims on the international dimension of moral agents, I want to leave it aside for the moment in order to turn my attention to the more fundamental issues this chapter aims to address. In this version, the individual's calculus of gain and losses is the decisive element in the definition of political allegiances. The instrumental character attributed to the political community means that special obligations would be regarded as contingent in the following way. The individual has no need to identify with the values of the system to be considered a member. Although he has to abide by the procedures of a political community, he has not necessarily to agree with the values that back these procedures and guide the determination of norms. He can act as being part of a *modus vivendi* environment, where the ends justify the means. In this environment, there is nothing that restrains him from breaking the commitments he previously made when it proves disadvantageous for him.

The perception of a merely instrumental and contingent role exercised by the community could be seen as problematic. From the perspective of individuals' moral formation, individuals do not have a strong awareness of the significance of the rules for the construction of their individualities and the social commitments implied by them. They respect the rules as arbiter of interactions among partners in a scheme of co-operation and do not necessarily identify with them as part of a common effort among members of the same political community to construct a system of law that, while allowing them to exercise their individual critical thinking capacities, offers them a common sense of identity that influences the perception of who they are and how they should act. They do not regard the rules as the embodiment of values that should be preserved for the sake of a public life that allows individuals to exercise their autonomy while offering them a sense of belonging.

As social relations inside the community are shaped by individuals' strategic rationale, whose strict calculus of gains and losses tend to determine their contribution to the attainment of a common good as well as their prevailing perception of a public life,

political participation in a common system of rights tends to be seen as contingent to the palpable benefits these individuals can have. And the consequent lack of social attachment among the members of the political community can eventually pave the way to a fragile system of rights, undermined every time it fails to promote individuals' strategic interests or to offer them incentives that can be easily perceived.

The other common version of the functional approach is known as moral cosmopolitanism, as it is exemplified in chapter 2. It takes up the challenge of constructing arguments to overcome some of the problems outlined above. It proposes to combine an open conception of society with individuals' moral dimension. In such a version, individuals share a potential universal rationality, which make them in some fundamental moral sense equal.¹⁶⁷ And given this universal rationality, there is the possibility of deducing principles of equal respect for the freedom of each and every individual regardless of their particular social condition. Political borders have therefore only non-derivative significance in the construction of just principles.

Specific obligations towards participants of the same political community can be accepted on the basis of their function in realising the ideals of universal freedom and equality. But they could only be justified if they could be argued for on the grounds of impartial concerns – taking into account the equal universal status of individuals as rational beings. Gewirth's defence of the Principle of Generic Consistency (PGC) illustrates the point. The principle of ethical universalism, which demands that individuals respect their common rights of freedom and well being, can indirectly serve to justify certain types of ethical particularism.¹⁶⁸ Special treatment could be defended as an effective form of securing individuals rights. As the individuals recognise the protection of the political community (guarantor of a system of rights and welfare), it is morally permissible for them to show special concerns to their country (political system) and to the compatriots who provide backing to the system.

The notion here implied, that partial concerns are a useful tool in the build-up of cosmopolitan principles, is best expressed by Barry. Supposing that his views on

¹⁶⁷ Brian Barry, "International Society from a Cosmopolitan Perspective" in David Mapel & Terry Nardin (eds.), *International Society: Diverse Ethical Perspectives*, (Princeton, Princeton University Press, 1998), page 144 and A. Gewirth, "Ethical Universalism and Particularism" in *The Journal of Philosophy*, Vol. LXXXV, No. 6, June 1988.

¹⁶⁸ A. Gewirth, "Ethical Universalism and Particularism" in *The Journal of Philosophy*, p. 291.

impartiality are to be expanded to the international domain, Barry would be arguing for a second order impartiality to be applied to the moral and legal rules of a global system.¹⁶⁹ He would be concerned about what would be the reasonable constraints to coexistence among beings that, though living in different contexts, can be potentially regarded as equally able to present valid claims to each other.¹⁷⁰ Following this reasoning, individuals are interested in principles that primarily secure impartiality in their coexistence as autonomous individuals, human rights principles in general. A fair distribution of resources becomes a point to consider once the autonomy of individuals, and therefore their ability to guide actions by impartial concerns, is put at stake. In this case, re-distributive principles become imperative.

Partiality could be considered the domain of what falls outside the framework of basic norms, representing a discretionary social sphere in which individuals can take decisions on the basis of specific social attachments. A more comprehensive form of interpreting his views on partiality, however, would be to consider his justification for rejecting first-order impartiality. Here, we would be faced with efficiency arguments. The existence of bounded political communities, with particular interpretations of general moral norms, would be justified on the basis that it is the best alternative to cope with problems of control, co-ordination and compliance in the population.¹⁷¹

In this understanding of Barry's view, specific political allegiances would be a function of how efficiently the polity is in the provision of the public good. The support for national agreements would, however, not be as contingent as in the closed system of

¹⁶⁹ A more comprehensive view on the argument of Barry on impartiality is presented in chapter 2. Here, I am only concerned with how it can serve to illustrate a functional interpretation of special obligations.

¹⁷⁰ According to Barry, second-order impartiality is a "test to be applied to the moral and legal rules of a society: one which asks about their acceptability among free and equal people" while first-order impartiality is a "maxim of behaviour in everyday life." Brian Barry, *Justice as Impartiality*, p. 194.

¹⁷¹ *Control* is related to individuals' desire to have some discretionary power to make choices that affects their particular lives and, at the same time, their need to recognise that they cannot have this power unless they concede it to everybody. Considerations about control is illustrated by the establishment of a system of private property. *Coordination* refers to the ability of the members of a society to define how closely they should regulate conduct. The burden of coordination would drastically increase in a society that accepts universal first-order impartiality. *Compliance* refers to how difficult it would be to secure compliance among individuals. For Barry, in a society guided by first-order impartiality, "a huge number of decisions that are now left to private judgement would have to be turned over to public officials, and all decisions left in private hands would be open to scrutiny and censure on the basis of the hypertrophied positive morality of the society." Brian Barry, *Justice as Impartiality*, pp. 202-207. Quotation from page 205.

co-operation described above, where the short sighted interests of individuals dominate. It would be substantially balanced by a universal rationality that sustains a moral kind of cosmopolitanism. Individuals would not merely see each other as co-partners in a scheme of mutual advantage but as someone they can identify with given their human capacity to present valid claims. It is taken into account in this view of rationality that international principles of justice can be not only formulated but also respected.

Though this version should be praised for considering the moral dimension of the individual while not denying specific attachments, I would argue that it also suffers from a fundamental problem. It downplays the role of different contextualised political communities in individuals' moral development, making the argument too demanding. In offering an account of partiality as a variable of an impartial system of norms, Barry is asking the individual to justify specific allegiances by impartial considerations that abstract from the context, which actually offers them some concrete meaning. In this context, where they assume a merely functional role as an efficient method to put into place a system of reasonable constraints, individuals' historically constructed specific attachments lose their significance as the necessary counterpoint to impartiality, one that, at the same time that it creates tension in the management of social relations, provides it with pre-established criteria of behaving that makes the decisions of the day to day life easier to be carried on and gives them an overall sense of purpose.¹⁷²

Barry in this sense fails to perceive that individuals' cognitive capacities to grasp and act on the basis of universal principles are not determined beforehand. Individuals realise their rational capacities (the basis of their moral capacities) in a web of social relations that, while providing them with opportunities to contribute to the construction of a common system of rights, also offers them some pre-established standards of judgement and action without which their life would become not only unmanageable but also meaningless.

¹⁷² To balance partial and impartial considerations through the use of critical capacities that are, up to a certain point, historically constructed is the main challenge facing the individual. Following this line of argument, see Taylor's illustration of the individual's need to be, at the same time, in society and a separated person in order to become full moral agents. Charles Taylor, Philosophy and Human Sciences: Philosophical Papers, (Cambridge, Cambridge University Press, 1985), p. 306. See also Charles Taylor, Sources of the Self: The Making of Modern Identity, (Cambridge, Cambridge University Press, 1996), pp. 28-30.

In general terms, I would say that the argument tends to concentrate on the ideal situation that offers validity to moral norms without paying enough attention to the particular circumstances in relation to which these norms are actually realised.¹⁷³ The validity of moral norms is derived from *a priori* thought, an impartial standpoint that offers a general standard to regulate individuals' claims on each other. The problem however is that there is a need to transcend the gap between this moral will and the empirical will that offers the content to moral principles and takes into account the historically situated individual with his partial demands. It is in relation to this empirical will that these principles are interpreted and can be successfully put into practice. It is also from this perspective that their legitimacy is constructed.

Following this line of criticism, universality would be realisable through individuals living in these specific historical settings who are jointly able and willing to question the foundations of the value systems in which they live and to formalise universalisable principles. In these terms, universality, though latent in the rational singularity of a human being, can only be fully grasped through the interaction among situated individuals, in which different interpretations of the principles aiming at totality are confronted. It is not a discovery made through a plunge into our rational nature but a process of gradual and constant acknowledgement dependent upon the interaction of particular situated individuals.¹⁷⁴

¹⁷³ This point is related to one of the main criticism presented by Hegel to Kantian morality. Since Kant regards the autonomy of the moral will as an *a priori* determination of itself, there would be a necessary gap between this will that conceives general moral principles and the empirical will that has to interpret and adopt them. See G. W. F. Hegel, Elements of the Philosophy of Rights, edited by Allen Wood, (Cambridge, Cambridge University Press, 1991). On the same point it is also worth looking at the Finlayson section about Hegel's criticisms of Kant's moral theory in the article G. Finlayson, "Does Hegel Critique of Kant's Moral Theory apply to Discourse Ethics?" in P. Dews (ed.), Habermas: A Critical Reader, (Oxford, Blackwell Publishers, 1999).

¹⁷⁴ It is worth mentioning that this reasoning acknowledges the importance of conceiving the world in terms of diversity of political communities. Since the abstract effort to grasp universal principles of justice is taken by someone who needs the community to become aware of his critical capacities, the activity of reasoning can be fallible and, to some extent, partial to a collective dynamic characteristic of a specific environment. In this sense, there is a need to argue for the existence of different political communities, systems of rights with their particular interpretation about the foundations of human interaction, which work as counter-examples in the construction of principles. By saying that, I am reinforcing the argument that the construction of universal principles is dependent on the establishment of a constructive dialogue among individuals living in different communities who are open to the claims of one another. It involves working through counter-arguments that test "in a continuum" what universality implies. I come back to this point in the next two chapters.

And the implementation of these universal principles would much depend on the development of a “situated constructed” motivation among the moral agents involved. It would refer to what I will call their responsible engagement, mainly born out of individual’s effective participation in the construction of a specific system of rights. Rather than being a mere co-operative endeavour by individuals who are prepared to carry the burdens in the attainment of the common good in return for concrete benefits, the polity would be perceived as an endeavour that they conjointly help to construct through the exercise of their citizenship. And in the process of construction, they become critically aware of who they are as distinctive individualities while strengthening group solidarity among them, making them more inclined to carry on their social responsibilities.¹⁷⁵

Following this argument, the main problem would turn out to be how to find a form of narrowing the gap between two facets of the individual – someone who at the same time that he forms attachments to specific systems of rights has a need to grasp general and more abstract principles to secure his integrity as a human being in a global environment. In the following pages, I will argue that one way of dealing with the problem is to suppose that specific systems of rights increasingly feel the need to acknowledge the cosmopolitan dimension of the individual and therefore contribute to a more regulated international environment. The need is based on the perception that national and international environments are becoming mutually dependent. And in these terms, the legitimacy of political communities is drawn from their success in coping with the duality of the individual’s ethical life. On the one hand, he needs specific social environments to consciously develop his sense of collective responsibility. On the other hand, he feels the need to explore their links with individuals living elsewhere so as to

¹⁷⁵ More specifically, the point is correlated to individual’s motivation to act morally. This motivation derives from a rationally mediated formation of the will that comes hand and hand with practices of socialisation and education that helps the individual to become aware of his personality. As Habermas suggests, sources of motivation are intrinsically linked to the development of individual psychology through social practices that while reinforcing his awareness of the other as an autonomous being (seen as an interlocutor who should be respected for his capacity for making consistent choices) as well as someone he cares for (solidarity feelings), makes him prone to perform his role as ethical agent in a political society where relations of mutual recognition take place. See Jurgen Habermas, Justification and Application, (Cambridge, Polity Press, 1995), page 33.

expand his sense of identity in order not only to better comprehend his political allegiances but also to offer valid inputs to the society he was brought up in.

4.2) The Constitutive View

The “constitutive view”, illustrated by nationalists’ arguments and echoed in the communitarian writings, rejects the attribution of a pure instrumental role to the community.¹⁷⁶ It pays attention to the active role exercised by the community in the constitution of identities. On this view, it is basically through the affinities with the members of my community and the way these affinities are framed in a system of social and political roles that I constitute myself and set priorities in my life. Given the fact that attachments derived from the common construction of a national public culture help to create my identity, I am entitled to give weight to the demands of my compatriots when thinking about the formulation and implementation of general moral principles.

As I pointed out when discussing the particularist approach in chapter 3, one of the greatest merits of the constitutive view is to throw light on the motivation problem facing the functional view. The individual abides by the system of rights not primarily because it is instrumental to the pursuit of his ends but because it is founded on a national culture that helps to shape the perception of whom he is and how he should act. As he

¹⁷⁶ Though considering specifically the arguments of nationalists in this section, I believe that similar kinds of criticism could be presented to communitarian arguments, as chapter 3 indicated. Walzer, for example, seems to approach the position of nationalists when advocating moral minimalism in the international sphere. For him, “...moral minimalism is not a free standing morality. It simply designates some reiterated features of particular thick or maximal moralities.” In this sense, it is not derived from a constructive dialogue among communities prepared to critically evaluate their own value systems. It merely represents what is common practice among moral cultures. Michael Walzer, Thick and Thin: Moral Argument at Home and Abroad, (Indiana, University of Notre Dame Press, 1994), p. 10. By the same token, MacIntyre seems also to portray a narrow view on the possibility of finding a broad consensus on moral issues. His disillusion with moral philosophy is derived from its failure to solve moral disagreements via a defence of a pretentious universal rationality. The alternative would be a historical and sociological approach to philosophy, in which the analysis of rationalities existing in different cultural environments could provide the basis for the build-up of a minimum set of coexistence rules. This moral minimalist approach is reinforced by his comments on the impossibility of achieving genuine universal moral consensus given the nature of human beings, who either are inapt to find themselves in other cultures besides their own or, when they do have this ability, distinguish themselves by so many half convictions that they become sceptical about generalisations. Alasdair MacIntyre, After Virtue: a Study in Moral Theory, specially pages 243-254 and Alasdair MacIntyre, Whose Justice? Which Rationality?, pp. 396-397.

attaches some intrinsic value to this national culture, he will not be strongly inclined to put into question common practices and institutions. It would bring too many burdens on himself. To question these practices and institutions is to throw himself into a dangerous adventure, putting at risk important pre-established standards of behaviour that guide his life and give it a sense of purpose.

There is however a fundamental problem with this perspective. It regards membership in a community as the main definer of individuals' identity without paying enough attention to the requirements necessary to construct autonomous individuals, more specifically individuals' development of a critical thinking ability that while making possible their distinction as individualities make them part of humanity, and counter-balance the power of a public authority. In many ways, it risks the development of these individuals' capacities in the name of a social cohesion constructed with an unclear notion of collective identity.

Let me explain. For the constitutive view, membership is based on characteristics either objectively present in a limited amount of individuals (ethnic similarity) or subjectively constructed through, for example, an interpretative remembrance of past collective experiences.¹⁷⁷ Given the multicultural components of present societies, I understand that what defines nationality is less the genetic similarity among members than the common perception they have about their singularity as a group. More precisely, nationality involves the subjective perception of sharing a national sentiment –*our* culture, *our* traditions.¹⁷⁸ And in this sense, it refers to the not so necessarily conscious ability we share of identifying each other as part of a distinctive whole.

The subjective elements that define membership leave open some questions. Is it possible for individuals to participate in a public debate that brings into question these elements? To what extent can the constitution of these elements be assessed and reviewed? For Miller the construction of a public culture based on particular cultural attachments can always be subjected to discussion by individuals. Tamir tends also to agree with this point when envisaging the possibility of a liberal national state, one that

¹⁷⁷See on the subject the work of Anderson, which explores the implications of the construction of a collective imaginary to social order. B. Anderson, *Imagined Communities*.

¹⁷⁸ The notion of a public culture open to political debate is developed by Miller. David Miller, *On Nationality*, pp. 68-69.

unites democratic participation with social cohesion based on national sentiment.¹⁷⁹ But as I emphasised before, such an interpretation cannot completely discard the aspect of manipulation of the subjective elements that offer individuals a common sense of identity. No matter which mechanisms are envisaged to curb the alienating effects of a distorted view of reality, they become dispensable once national cohesion is put at risk.¹⁸⁰

Tamir's reflection on the construction of the Israeli national state illustrates this point:

[Using a nationalist discourse, states restructure the image of both the political community and the conflict itself. Thus creating a frame in which the difficult question of how an individual should act in relation to a certain conflict is simplified and reinterpreted in terms of emotional ties and moral obligations to family and community...Cognitively, it focuses individuals' attention on a small subset of all the consequences of the choice to sacrifice for the nation or not, and thus makes the choice set simpler, while also biasing it towards the nation. The restructuring of the citizen's choices is indispensable for states that foster a contractual ethos as they lack the ideological foundations necessary to incite in individuals a readiness to risk their lives for the state and is much less essential for states whose constitutive set of values provides a justification for self-sacrifice]¹⁸¹

When considering the possibility of biasing individuals' choice through the formulation of a national discourse, this approach is indirectly constraining individuals' capacity for applying critical thinking to the state structure to which they are subjected. In broader terms, it is impairing the full exercise of citizenship by influencing the intelligibility of the norms of justice, the individuals' understanding of the reasons why their actions are to be regulated by general moral principles.

Let me specify my point considering individuals' moral formation. The social attachments stressed by this view, derived from beliefs and perception individuals inherit or form when interacting in a specific social environment, are necessary. They help to define and to reinforce social roles and therefore collective forms of behaviour. By doing that, they transform moral motivation into something intrinsic to the performance of these roles, paving the way to what is believed to be a more stable political system.

¹⁷⁹ I touched on these points in Chapter 3, in which an extended analysis of Miller and Tamir version of nationalism is presented.

¹⁸⁰ As Waldron remarks, there seems to be a magic attached to the pronoun *our*, which stresses the construction of a collective imaginary at the expense of the critical apprehension of reality. See section on cosmopolitan culture in J. Waldron, "What is cosmopolitan?", *The Journal of Political Philosophy*: Volume 8, Number 2, 2000, pp.227-243.

¹⁸¹ Yael Tamir, "Pro Patria Mori! : Death and the State" in R. McKim & J. McMahan. (eds.), *The Morality of Nationalism*, p. 229

Nonetheless, I think the critical appraisal of these beliefs and impressions should not be constrained by the imposition of a homogeneous or biased view in the name of social cohesiveness. To allow that the community manipulates collective beliefs and the assignment of social roles is to jeopardise individual's reflection on the components of his identity and the kind of commitments he has when forming part of a social order. It is to offer a blurred picture of the individuals' public responsibilities. Without any clear assignment of these responsibilities, the system of laws would lack accountability, being a wide range of actions justified in the name of an ill-defined notion of culture.

Social attachments, which help to constitute a common identity and give backing to moral motivation, have to be counter-balanced. It has to come hand in hand with individuals' conscious effort to understand his role in the construction of this order as a citizen and the reasons why the exercise of this citizenship is relevant and should be preserved. From this viewpoint, individuals' autonomy (critical thinking) is to be seen as a pre-requisite to the existence of a polity, a variable that in no circumstances can be suppressed or diminished.

In limiting individuals' expression or ways of defining themselves, the constitutive approach seems also fallible in relation to the fluidity of individuals' identity, the international dimension of the individual. Individuals' curiosity or the appreciation of the unknown is previously restrained by social mechanisms developed inside the society in which they live. If openness to foreigners' claims emerges in this case, it is less a fruit of individual's critical appreciation of how things are done elsewhere, influencing their perception of how differently things could be done where they live, than a form of reaffirming his community's particular values in face of otherness. In this context, the individuals' discovery of new possibilities of expression and self-fulfilment, linked to the understanding of components of identity taking into account a broader spectrum of relations, is limited beforehand.¹⁸²

¹⁸² Such a perception of foreigners could influence in a negative sense the formulation of international principles of justice. These principles would hardly be derived from a constructive effort of different communities to grasp what to be human implies. That could happen not because this approach *a priori* tends to deny the possibility of any meaningful dialogue among communities but because it is restrained by the demands of a national community. The content of international obligations would tend to be interpreted in the light of the community's need to maintain a sense of national cohesiveness among its members.

4.3) The Ethical View

The ethical approach tries to incorporate elements of the above two tendencies, justifying special obligations on the basis of the value of citizenship as it was suggested by Hegel. Illustrated in different ways by the works of Habermas, Charvet, Scheffler, Dagger and Mason in the contemporary literature, it argues that it is through individuals' participation in the construction of a historically situated system of rights that independent motivated moral agents conscious of their common responsibilities can be formed.¹⁸³ It is in the individual's proper understanding of the value of citizenship that a balanced interpretation of the instrumental and constitutional roles attributed to the political community is to be found.

Considering my own interpretation of a Hegelian framework, I would say the ethical approach involves, first, a conception of the individual. The defining feature of an individual is his capacity to be "concernful", that is self-aware of his aims in relation to the aims of others and having the intrinsic will to actualise this nature.¹⁸⁴ Contrary to a more individualistic position of seeing the individual as being able to define a goal and carry on the means to attain what he wants, seeing others as either obstacles they have to overcome or at best useful means to achieve those ends, this understanding stresses the individual's ability to reflect critically on his free will by considering to what extent

¹⁸³ Despite underlying the commonality among these authors, I am aware that their objective of research and arguments have their own specificity. In general terms, Habermas, is formulating moral arguments on the basis of his theory of communicative action, in which the justification of norms is linked to our participation in a language community. Scheffler is concerned with striking a balance between the cosmopolitan dimension of liberal thought and the evidence that individuals attach value to their specific allegiances. Dagger aims at defending obligations derived from our membership in a particular polity considering the perspective of his theory of "fair play". Mason intends to offer an account of special obligations based on the intrinsic value of citizenship. Jurgen Habermas, Justification and Application;; Jurgen Habermas, Moral Consciousness, (Cambridge, Polity Press, 1992); Jurgen Habermas, Between Facts and Norms, (Cambridge, Polity Press, 1997), S. Scheffler, Boundaries and Allegiances: Problems of Justice and Responsibility in Liberal Thought, (Oxford, Oxford University Press, 2001), Richard Dagger, "Membership, Fair Play and Political Obligation" in Political Studies, 2000, Vol. 48, 104-117, MASON. A., "Special Obligations to Compatriots" in Ethics 107, April 1997, 427-447. Mason's argument was further expanded in A. Mason, Community, Solidarity and Belonging: Levels of Community and their Normative Significance, (Cambridge, Cambridge University Press, 2000).

¹⁸⁴ See Allen Wood, Hegel's Ethical Thought, (Cambridge, Cambridge University Press, 1995), pp. 17-19.

others are conjointly helping him to define this will. It is a reflection on the social construction of his will and its worth.

From this viewpoint, an individual is autonomous not merely when he has the capacity to act autonomously in the Kantian sense, acting rationally by taking others as ends, but when actually he exercises this autonomy in a situated, concrete living social environment.¹⁸⁵ It is self-mastering the elements of his identity, including more relevantly the conscious understanding and acceptance of the social roles he performs with others in a specific historically constructed environment. By being able to assess the shortcomings of social interactions and to identify ultimately with their foundational elements, they become more inclined to bear the public responsibilities imposed on him.

This conception of the autonomous individual is based on the idea that self-consciousness can only be developed when individuals are actively involved in the construction of social wholes, being the political community regarded as fundamental in this development.¹⁸⁶ The political community here mentioned is not an abstraction but a body (the state) that exists through the individuals as concrete subjects deliberating on a specifically defined system of laws (the structural basis on which lies this socio-political order). It derives fundamentally from the fact that individuals recognise each other as sources of independent valid claims when participating in the formulation and implementation of its collective decisions. Its structure can in this sense be consciously known. And it can also be willed for the sake of its own rationality - a rationality embodied in the common decisions conjointly taken.

¹⁸⁵ Allen Wood, *Hegel's Ethical Thought*, (Cambridge, Cambridge University Press, 1995), pp. 23-37.

¹⁸⁶ The reference here is to Hegel's moral stages in individuals' development – the family, the civil society and the state. When being part of a family, the individual becomes aware of the bare ideas of reciprocity, respect for other, altruistic feelings but is still dependent on parents to guide her actions and unable to grasp all the reasons why a range of behaviours are forbidden or considered inappropriate. As an adult participating in a working environment, the individual becomes aware of his independence. He is now able to provide for himself and recognised as interlocutors by his colleagues. Though developing his sense of reciprocating behaviours, keeping his words, abiding by contracts, compromising, he still finds himself in hierarchical forms of relations. He regards the other as, for example, a client, a boss, a negotiator, an expert or authority in a subject. It is only as fully member of a political community that the individual is able to recognise others as sources of equally valid independent claim. Contemporary authors working within the ethical perspective have extensively discussed these moral stages. See John Charvet, *A Critique of Freedom and Equality*, (Cambridge, Cambridge University Press, 1981); Mervyn Frost, *Ethics in International Relations: A Constitutive Theory*, (Cambridge, Cambridge University Press, 1996); Jurgen Habermas, *Moral Consciousness and Communicative Action*, (Cambridge, Polity Press, 1992). Habermas will develop more loosely categories dividing the moral stages in terms of pre-conventional, conventional and postconventional stages of interaction

It is important to underline here that the state assumes this role because it is the only fully recognised sovereign body where this collective rationality can be exercised. Even if it could be considered that individuals can nowadays exercise this kind of rationality in some groups of a national or an international civil society, this possibility is ultimately dependent on the collective consensus of citizens of a state or representatives of states. The way other social wholes work (family and civil society) is therefore more and more a political decision in modern times – ultimately scrutinized by the collective consensus of citizens.¹⁸⁷ Having said that, it is important to emphasise that this preponderance of the state is conditional. The state is actual only when its system of law represents the embodiment and the expression of a collective rationality that was built by independent critically thinking individuals “concernfully” aware of their social dimension.

Considering the above points, let me now work out more precisely what I understand by a system of laws and how individuals’ involvement in its construction affects their moral development. Each system of rights is first defined by general principles that set the conditions for the validity of moral norms. These conditions are founded on a conception of human being. They presuppose that each and every individual despite the personal afflictions he endures or the social circumstances under which he lives has a valid claim on the enjoyment of his freedom, which should be taken on an equal footing with others.¹⁸⁸ They serve as a general and formal constraint on the

¹⁸⁷ See Shlomo Avineri, *Hegel's Theory of the State*, (Cambridge, Cambridge University Press, p. 80).

¹⁸⁸ It is clear that one could argue that the development of individuals’ critical capacities is dependent on the existence of interlocutors, ones who are at least able to present their claims on an equal basis to their own. But a question remains. Why should I take all other claims as seriously as mine, when I know that there are substantial differences in our capacity for reasoning? The most important reason for recognising and abiding by the equality principle is that every individual has the capacity to grasp the principle of freedom. It is to acknowledge that each and every person is able to understand that the exercise of his freedom is dependent on considerations regarding the free movement of other persons. Respect for the freedom each person has to think, move and form associations is significant no matter how questionable is anyone’s capacity of employing critical reasoning. That is so because to be recognised as a free agent I have to be able at least to recognise others as provided with this capacity, otherwise my bare existence as a person would be put at risk.

The acknowledgement of this kind of equality does not imply the rejection of pre-selection. The individual best endowed can still select in a second stage the group of interlocutors he will be more frequently dealing with. This is not necessarily a bad thing to happen. The individual best endowed should be given incentives to the extent that the development of his abilities can have a positive effect on society’s organisation and development. But even in this case, equality can still play a role. By emphasising equal

further definition of the content of a system of rights, a reminder of what justice ought to imply.¹⁸⁹

The content of the system of rights encompasses a set of legal, political and economic principles that guarantee the status of members of a specific community existing to secure a fair distribution of liberties and set the conditions of a united will formation.¹⁹⁰ It deals with issues that give form to collective goals and somehow shape a common way of life among members of the community. Each dimension is represented by principles that, though referring to validity principles conceived in terms of individuals' ideal role as moral agents, are somehow derived from the interaction of historically situated individuals. The formulation and interpretation of these principles take into account the dynamics of human relations, influenced by the particular interests and advantages a person has given his social position in a specific historical context.

The legal, political and economic principles presuppose each other. The legal principles are concerned with the equal distribution of private autonomies among associates of a political community. It guarantees that the law will be applied to everyone on a non-discriminatory basis (equality among legal agents). It also specifies who and under what conditions someone is entitled to be a member of the community (criterion of membership). And finally, it institutionalises a legal code, envisaging forms of dealing with members who infringe the liberties of others.¹⁹¹

It is in the enjoyment of their legal status as members of a community that individuals become aware of what personal freedom implies. Freedom implies mutual *recognition*. It is when recognising each other as sources of equally valid claims that the individual becomes aware of his own status as an independent being whose viewpoint, in

rights, there will be a guarantee that leaders will be accountable to and get legitimacy from the broader audience they have. They will thus more easily represent the people's will.

¹⁸⁹ The categorisation of a system of rights in terms of general validity principles and specific principles dealing with its content as well as the differentiation between the legal and political dimensions here described was heavily influenced by Habermas' works, particularly Jürgen Habermas, Between Facts and Norms.

¹⁹⁰ In spite of focusing on the legal and political dimension, Habermas' framework seems to presuppose the re-distributive principles so as to guarantee individuals' effective participation in the formation of a united will. This co-relation was particularly explored by Rawls when laying down his two principles of justice, referring to the basic idea that "all social values – liberty and opportunity, income and wealth, and the bases of self-respect – are to be distributed equally unless an unequal distribution of any, or all, of these values is to everyone's advantage." John Rawls, A Theory of Justice, p. 62.

¹⁹¹ Jürgen Habermas., Between Facts and Norms, p.106.

opposition to asymmetric forms of relations such as family and working place, has to be respected and prevented from being overridden by unreasonable claims. At the same time, individuals have a more encompassing idea about what social engagements demand from them. If, on one hand, they have entitlements as members of a community, on the other hand, they also have to act *responsibly*. A responsible behaviour is one that acknowledges that to exercise freedom is not merely to learn how to cope with necessary constraints, realising that undue behaviours will face punishment. It is also related to their personal engagement to respect the rights of compatriots seen as a source of valid claims. In broader terms, individuals' mutual recognition and their ability to act responsibly lead to a defence of reciprocity of treatment. As a participant in a social co-operative scheme, each individual deserves to be respected as an autonomous being able to think and act reasonably.

In the exercise of their political rights, individuals are persuaded to take the perspective of the other on an equal basis and develop a particular sense of *collaboration*. The political principles envisage the establishment of procedures that guarantee individuals' fair participation in the deliberative and decisional processes relevant to legislation.¹⁹² Mainly, they refer to democratic procedures that provide each individual with an equal chance to offer inputs in the formation of collective norms and decisions that will guide the relations inside the community. Through the confrontation of rationally situated wills in the development of the deliberative and decision-making processes, the individual perceives himself as someone who together with others helps to shape and to legitimise the content of a system of rights. The individual comes to regard himself as part of a whole, a united will that lays the foundations to the construction of a particular social system.

As an active citizen, the individual learns to take others' point of view seriously, to have the capacity of judging the impact his actions have on other lives and, somehow, to learn to grasp the differences in the roles he performs in his life, such as neighbour, family member, worker and social co-operator. In this understanding, he does not merely find himself embedded in pre-determined social structures. He can have a say in what these structures should mean since he is a participant in the formulation and

¹⁹² Jürgen Habermas, Moral Consciousness and Communicative Action.

interpretation of individual and collective rights. It is clear that this individual exercise is balanced by the impact the totality (the overall output of the participation of all members of the community) has in the formation of a common identity. The emergence of this distinctive form of life will, in turn, influence the grasp of his own personality.

The exercise of citizenship implies nonetheless the existence of well-established economic principles, more specifically re-distributive principles. Related to individuals' access to the means of economic subsistence, these principles represent a pre-requisite to the full exercise of civic and political rights. To participate actively as a citizen and as a member of civil society, persons should be *economically empowered*, having access to food, clean water, a health system and education. Otherwise the exercise of liberties becomes stripped of the meaning suggested by an ethical approach, individuals' conscious effort to grasp the implications of their participation in the construction of a polity for their identity.

It is worth pointing out however that the notion of re-distributive principles tends to represent more a set of open questions than final statements about the kind and the level of economic goods that should be secured overall among the members of a society. Having said that, I think it is still worth speculating about the probable directions taken by the ethical approach when addressing the issue.¹⁹³ Considering this

¹⁹³ Following the above reasoning, the approach here defended would reject the narrow individualistic view proposed by contemporary libertarians. Such a view leaves the market to decide the allocation of goods, including the ones related to subsistence, while granting the state the minimum necessary function to guarantee that individuals don't violate moral constraints determined by the rights of others. The insistence on regulative procedures underlines the basic assumption of this perspective, individuals' independence and the possibility of comprehending the political domain only in terms of the reinforcement of negative rights (non-interference rights).

Libertarians tend to avoid a more comprehensive discussion about the nature of rights, one that considers the possibility that the constitution of individualities is dependent on social interactions that can be valued for themselves. By focusing on non-interference, they disregard the possibility that rights of *recipience* can, and given the effect these rights have on social interactions, should be justified. According to this approach, there can't be any affirmative action to protect individuals' access to minimum levels of food, education or health care. Such a protection has to be seen either as an unwary effect of the market's dynamics or a fruit of particular interests acting at a precise time in the market. The risk of this strategy is to legitimise excessive inequality, through the pretended neutrality of a market dynamic in the distribution of goods. In an 'extreme' but not improbable scenario, the ablest individuals to profit from an economically competitive environment will be the ones to benefit the most from the political process, without necessarily caring for the side effects on the rest of the population. The emergence of marginal sectors of the population, which can be stripped of their dignity as human beings since incapable of effectively enjoying their liberties, can therefore become a real possibility. In this scenario, individuals will tend to regard each other as means and not ends that actively contribute to the formation of moral agents.

approach, economic opportunities should be comprehended in broader terms, in correlation with the legal and political principles of a society. They would have to represent an overall access to a minimum level of welfare, which would guarantee individuals' physical and psychological integrity to exercise their capacities as agents responsible for the construction of a system of rights. The minimum would certainly include proper nourishment, housing, basic hygienic conditions, literacy. But this definition begs the question: is there any way of determining an optimum level of welfare that should be guaranteed among the members of a specific community? Given the constant change in environment conditions and personal expectations, a precise answer to the question looks improbable.

An interesting way of approaching the issue could come from Vlastos' considerations on the equality principle.¹⁹⁴ Human beings would be entitled to this benefit at the highest level at which it may be secured. To get individuals to be as creative as possible and to bring to existence values that will enrich their lives and the lives of others. A mild interpretation of this statement would defend economic equality in society to the highest level while allowing different outcomes in the exercise of abilities to be rewarded.¹⁹⁵ First, a minimum should be equally secured among individuals so they can secure the means to their flourishing, including the employment of their critical capacities in the common construction of a polity. Second, although extremes between rich and poor should be avoided, there should be a place for merit, derived from the individuals' effort to make use of their different capabilities, when not infringing a general distributive principle that secure the basic rights of individuals. Third, social and economic advantages obtained by the most capable individuals should, somehow, revert to society. It means that advantages should not be pursued despite their

The term "rights of *recipience*" is used by Singer. Peter Singer, "Rights and the Market" in J. Arthur & H. Shaw (eds.), Justice and Economic Distribution, (New Jersey, Prentice-Hall, 1991), p.200.

¹⁹⁴ VLASTOS, G., "Justice and Equality" in J. Waldron (ed.), Theories of Rights (Oxford, Oxford University Press, 1984), page 64.

¹⁹⁵ Rawls' thoughts on the issue on A Theory of Justice have contributed to reinvigorate the debate about redistributive principles and the place of luck, choice and personal endowments in its definition. Dworkin remains here a reference to what is at stake in the discussion about equality. Ronald Dworkin, "What is Equality? Part I: Equality of Welfare", Philosophy and Public Affairs, Vol. 10, No. 3, Summer 1981 and Ronald Dworkin, "What is Equality? Part II: Equality of Resources", Philosophy and Public Affairs, Vol. 10.

impact on other lives. Substantial improvements in individuals' lives should have positive repercussions on the welfare of other members of society.

Behind the exposition of the need for individual's participation in the construction of a system of rights (content) to realise moral capacities is an argument on special obligations, which takes into account at the same time the instrumental and the constitutive roles performed by the political community (state). I have obligations towards the members of my community because together we put into place a system of rights that, first, is functional to the development of our own moral (rational) capacities. It is as citizens of a state that we seriously have to consider other viewpoints on an equal footing and to realise that our joint efforts, in respect of our status as equally worthy and responsible co-operators, ground a fair system of rights. Second, special obligations are also founded on the fact that the system of rights embodies a collective understanding about a way of living. It comprises a whole of historically affected evaluations that serve as a reference to the justification of our actions and to the discovery of where we stand as distinctive personalities or, to put it in another form, to realise who we are as individualities.

The fundamental roles performed by the state in individuals' moral development and implied in the explanation of special obligations has however to be clearly qualified. Individuals need to be actively, or more precisely consciously, involved in the political process of a specific polity. He has to find open institutional channels to develop his critical capacities and consistently grasp how he, conjointly with other members, affects the construction of the system. Although I do not have to reflect on each and every norm I abide by, institutional possibilities to understand and evaluate the reasons why I act in accordance with a value system have to be available to me. In this sense, a conditional principle is implied in respect of the role performed by the state. Political legitimacy depends on the state's ability to offer sufficient institutional mechanisms so that individuals can actively feel part of the construction of a system of rights and identify with the values of the system even after appealing to their critical capacities to scrutinise its foundations.

Having said that, I think it is worth exploring a little bit more what is implied in this conditional role performed by the state in individuals' moral development by

answering the question raised by the recent literature on justice about whether the limits of an ethical approach do not lie, as it does for nationalists and communitarians, in the community's capacity of asserting itself over the individual's ability to exercise critical thinking and explore new dimensions of their sense of identity.¹⁹⁶ This will serve not only to reinstate in a more explicit way the above reasoning but also to explore to what extent the incorporation of an international dimension becomes essential to the state's performance of its conditional role.

It has to be said that proponents of the ethical view have somehow contributed to the view that the ethical approach faces similar kinds of limitation as the ones faced by communitarians and nationalists. For example, Mason's defence of special obligations in terms of the polity's contribution to the moral flowering of individuals comes hand in hand with a claim about the "intrinsic" value of citizenship.¹⁹⁷ According to this interpretation, there is something special in the nature of citizenship. To be a member of a polity turns out to be a good in itself, not necessarily subject to individual's scrutinising reason.

In case this interpretation is accepted, there would be nothing substantively different separating this view from the one defended by particularists. There would be in fact a striking resemblance between the two perspectives if we take into consideration the insights of Tamir on the implications of morally dubious communities, such as the Mafia, for an argument founded on the nature of relationships. If what defines obligations is the sense of connectedness among the members, constitutive forms of behaviour, such as bribery or murder to preserve the family's honour should not be in principle contested. But as these behaviours are morally blameworthy, since they inflict irreversible pain on individuals, Tamir faces a dilemma similar to the one faced by Mason.¹⁹⁸ Either they reiterate their point about the sense of membership being in itself a ground for special

¹⁹⁶ That seems to be the claim of Barry against the contractarian view of Charvet, "within which the bounds of society are also the bounds of justice." Brian Barry, "International Society from a Cosmopolitan Perspective" in David Mapel & Terry Nardin (eds.), International Society: Diverse Ethical Perspectives, p. 145. Scheffler also touches on the problem on considering the voluntarist objection to his moderate interpretation of associative duties. S. Scheffler, Boundaries and Allegiances: Problems of Justice and Responsibility in Liberal Thought, Oxford University Press, Oxford, 2001, page 56.

¹⁹⁷ A. Mason, "Special Obligations to Compatriots" in Ethics 107, April 1997, p.443.

¹⁹⁸ Yael Tamir., Liberal Nationalism, pp. 101-102. In these terms, Dagger also addresses the dilemma faced by Tamir. Richard Dagger, "Membership, Fair Play, and Political Obligation" in Political Studies, 2000, Vol. 48, p.111.

obligations and accept its consequences or they back a qualified view of associations. Tamir's chosen path is the one expected for a nationalist. She makes clear that the feeling of belonging and connectedness should be regarded as the "true essence of associative obligations".¹⁹⁹

More in touch with an ethical approach, Dagger proposes a qualified conception of association. It has to incorporate a principle of fair play, "everyone who participates in a just, mutually beneficial cooperative practice has an obligation to bear a fair share of its burdens."²⁰⁰ The society has to be reasonably regarded as a co-operative enterprise so that members have an obligation to do their part, to fair play and respect for the rule of law, in maintaining the enterprise.²⁰¹ Individuals' disposition to fair play will be greater if they realise that the enterprise works to their benefit, in the sense that they do not endure non-equivalent burdens.

Though this interpretation calls attention to the essential elements necessary to build an ethical conception of the political community - seen as an endeavour based on individuals' autonomy, reciprocity of treatment and transparency, I think it comes short of spelling out the reasons why these elements support this conception. It tends to put too much emphasis on the idea of equivalent burdens of a social enterprise without paying enough attention to the process of individuals' engaged self-awareness that can only be carried out in the contacts they establish with otherness (compatriots in this case) and the public institutional possibilities open to these individuals to effectively participate in these interactions. It is ultimately these factors that lead to the formation of a consciously accepted common identity capable of supporting the existence of an ethical political community.

If we understand the world from this viewpoint, it is necessary to consider the diversity of public institutional arrangements that not only guarantee individuals' integrity as distinctive moral personalities but its actual exercise. As I will argue in the next chapter, there should be internal collective mechanisms that guarantee a clear

¹⁹⁹ Yael Tamir, Liberal Nationalism, 1993, p.137.

²⁰⁰ Richard Dagger, "Membership, Fair Play and Political Obligation", Political Studies, 2000, Vol. 48, page 112. See also "Rights, Boundaries, and the Bonds of Community: A Qualified Defense of Moral Parochialism" in The American Political Science Review, Vol. 79, 1985.

²⁰¹ When considering society as a co-operative enterprise, Dagger is clearly referring back to Rawls. John Rawls, A Theory of Justice.

separation between civil society, conceived as a sphere where I assert my independence, and a political sphere where independent viewpoints are united through a fair process of public deliberation (involving reciprocity, transparency and so on) to constitute a distinct common whole. But there should also be international mechanisms envisaged by the states so that individuals' process of being challenged by otherness in the construction of their identity does not stop at the borders.

This last point is made taking into account the fact that despite individuals' dependence on a specific historical context for developing their rationality, there is nothing *a priori* that necessarily limits the use and exploration of their rationality. Individuals cannot in this sense be deprived of the sense of fluidity of their identity, the capacity for learning and re-evaluating their thought and actions through contacts with individuals who were constituted by the values of different political communities. This is all the more so when considering that the possibilities of individuals engaging in this exploratory exercise have been potentially enhanced by their explore to an increasingly interdependent world.

It could therefore be argued that there is a need to conceive an international framework composed of global principles of justice and institutions that embody a common sense of rationality shared among states, making it possible for their citizens to further explore their moral capacities in encounters with distant others. It could also be argued, as I will do more properly in the next chapter, that this need opens the way to an understanding of the deliberation of international principles as the opportunity individuals, who are conceived as the formal representatives of a state or merely as citizens, have to enhance their *moral sensibility* in the use of rational capacities. It emphasises that if they want to critically appropriate the values underlying the social environment they live in and the possibilities of universality, they need to become more flexible about how they establish a relation with otherness. Given the diversity and peculiarities of existing systems of law, individuals have probably to focus not so much on the way of presenting their claims (reasonableness criterion) in order to be understood or to sound convincing but on the ways necessary to assimilate others' claims. The urge to fix on what the other has to say expresses the urge to refrain from taking other's positions for granted. Their thought has to be open to complexity, in a constant struggle

to evaluate their way of thinking by trying to catch the richness of other value systems in order to unveil the universal dimension of their humanity.

4.4) Concluding Remarks

I have here explored the dynamic exercise of mutual determination that characterises the relationship between individual and political community. In presenting my arguments, I rejected the instrumental and constitutive views on the ground that they portray an imbalance in the interactions between individual and polity. Both views pave the way to a unilateral determination of one part over the actions of the other, leading to a defence of special treatment either on the basis of strict individual rational calculation or in terms of a loose notion of social attachments.

Such biased ways of defending special treatment have significant implications for the analysis of international relations. As the instrumental and constitutive views take the individuals' mindset to be universally or socially pre-determined, the terms of individuals' interactions in the international environment seem to become less flexible and open to criticism. They portray a rigid picture of this environment rather than seeing it as a necessary complex and dynamic one, in which individuals' engagement give them an opportunity to confront established beliefs derived from the construction of a specific system of rights and to use their moral sensibility to build up common principles of conduct

As an alternative to the shortcomings of these views, I argued for an ethical conception of polity. It is through their participation as autonomous beings in the formation of a common will, which legitimises political actions and offers reasons to justify special treatment, that historically situated individuals become aware of moral capacities essential to the exploration of their identities.

Even stressing individuals' autonomy, fairness of treatment and political accountability, such an approach has been facing criticism related to its ability to distinguish itself from social determinism. In reflecting on its possible deterministic implications, I called attention to the need not only for making available internal

mechanisms that guarantee the effective representation of different political voices but also for speculating about the possibility of comprehending individuals' engagement in an international environment as a complementary stage in their development. Though more has to be said about the last point, I think it is as a participant in the construction of a regulated international environment that individuals are able to exercise their moral sensibility and further question the common identity constructed inside specific polities. Principles of justice in this sense should be, in part, conceived as the outcome of an ongoing process of individuals' attempt at self-discovery through openness to the claims of others.

CHAPTER 5: Characterisation of International Society

Until now the international dimension has only been indirectly addressed as part of a discussion about how the state, understood as a whole of social interactions in which individuals' mutual recognition as free agents takes place, is bound to provide mechanisms to foster individuals' moral development. It is my intention in this chapter to characterise explicitly international society as one in which the states emerge by necessity as the fundamental actors. They relate to each other as sovereign units that mutually recognise the unique ethical roles they perform in individuals' moral development. In this relation, they exchange viewpoints about the common grounding of their ethical roles, learning from each other's position so as to re-evaluate their individual performances and looking forward to the mutual accommodation of interests and values in the form of regulatory institutional procedures at the international level.

I argue that there are two interconnected sets of reasons why the states are to be seen as the main actors in international relations. First, the state effectively supports an ethical process born out of individuals' relation with each other *qua* citizens determining a historically situated system of rights. It provides legitimate and enforceable institutional mechanisms through which citizens, deliberating about the fundamental rights and duties that underpin their collective political life at a certain time and space, develop their moral abilities for independent and conscious thinking as well as of relating to each other on the basis of these abilities. Moreover, it also reveals itself as an agent featuring its own individuality. Such an individuality (of the state) is derived from the formation of a distinctive public political culture by which citizens share a common sense of identity and are motivated to act morally.

Second, the society of states - understood in terms of states' interactions as self-determining ethical entities which are equally and sufficiently open to the claims of each other - constitutes the locus where distinct ethical interpretations of the fundamentals of individuals' rights can be exchanged, assessed and subjected to truly universal grounding. It makes possible a cross-examination of ethical experiments across space and over time.

Such an inter-state process paves the way to the robustness of international principles of justice both domestically and internationally. It enhances at the same time their legitimacy and applicability.

As can be noticed from the points presented above, my interpretation is wholly rooted in a distinctively open and dynamic account of ethical processes. I mean by openness the concept that states have to be individually perceived as ethical entities exposed to a diverse spectrum of ethical experiences and willing to respond openly to them. The account is dynamic at two levels. At the first level, and this is standard in any neo-Hegelian interpretation, states' interactions have to be thought together with the evolution of history. At the second level, states recognise the foreign environment as a source of ethical exchanges, which lead them to have a better grasp of the moral foundations of their particular system of rights. Therefore, I put forward an innovative interpretation of states that relies on openness and on an enhanced dynamism, which is determined by both the historical attribute of the ethical processes and the inter-state and multicultural dialogues that naturally emerge in a society of states.

Such an enhanced dynamism, I assume, leads us to perceive ethical states as necessarily ideal constructs that are embedded in a historical context and subject to its challenges. In this sense, the arguments refer to actual institutional practices defining some societies, mainly but not exclusively liberal ones, and how they have been challenged by a globalised world in the performance of their moral roles. The inexorable socio-economic interdependence based on technological development affecting the means of communication, which shapes the lives of compatriots and non-compatriots and characterises the society of states in our time, nourishes a notion of ethical processes. The cross-border flows of people and ideas as well as the multinational flows of goods, services and financial resources foster the emergence of new ethical discourses and organisations in the form of an expanded international civil society - NGO's, boards of international corporations and informal networks. These practices and discourses permeate the development of states' ethical processes and as so they should be recognised in the construction of international just principles.²⁰²

²⁰² The state has been gradually obliged to face up to the expansion not only of NGO's, boards of international corporations and informal networks but also of entities that are politically and legally off-

Furthermore, and most importantly to my ethical framework, these flows expose the increasing clashes between developed societies and non-developed ones as well as between liberal and non-liberal ones. Rather than avoiding the implications of these clashes, there is a need to consider their significance in the construction of more workable international just principles. I argue that the way to consider this significance is to understand the formulation of principles as an exercise in which ethical states have to openly exchange viewpoints on their particular interpretations of a system of rights on the basis of a revitalized reasonableness, which should include the exercise of a moral sensibility. Such a discussion tries to capture what a historically limited (and mostly liberal) notion of reasonableness cannot convey.

The chapter is divided into four sections. The first one upholds the claim that the main characteristic of an ethical state is its ability to guarantee the exercise of reciprocity between equally free claimants, contributing in this form to individuals' moral development. It explores what I perceive to be the fundamental elements involved in this exercise and briefly discusses the actual state mechanisms responsible for guaranteeing this exercise in view of the challenges provided by context characterized by increasing interdependence. The second section offers a characterization of the relations among states in an international society. This characterisation is made in terms of states' need to recognise each other as equally self-determining ethical units capable of openly exchanging their particular views in the moral foundations of their system of rights so as to construct viable international just principles. It then illustrates these terms of interaction by referring to the actual process that defines the content of principles of justice in a forum such as the UN. The third section considers the constraints facing this deliberation process and examines to what extent states that do not share similar ethical values could be recognised as members of an international society and eventually as participants in the construction of international just principles. As a result of the arguments backing the recognition of states that defend different ethical values, the fourth

springs of the states, such as international organisations and regulation agencies. These entities, born inside or outside states' initiatives, respond to the increasing demand for what Rosenau calls "governance": the formal or informal mechanisms and rule systems that exercise authority so as to allow individuals to pursue their coherence and attain their desired goals in a more globalized environment. J. N. Rosenau, "Strong Demand, Huge Supply: Governance in an Emerging Epoch" in I. Bache & M. Flinders, M., Multi-level Governance, (Oxford, Oxford University Press, 2005), p. 31.

section explores the need state representatives and civic society groups have to combine reasonable (and mostly liberal) arguments with a moral sensibility that is capable of grasping in a less biased way the claims of one another in the actual process of formulating valid principles of justice. Finally, I draw some conclusions.

5.1) The State as Ethical Entity

The state provides a unique kind of institutional mechanism through which individuals can relate to each other on the basis of reciprocity, fairness of treatment and trust. It sets legitimate enforceable mechanisms that make it possible for individuals of different backgrounds to effectively relate to each other as equal sources of valid claims in the construction of a common order that while limited in time and space touches diverse aspects of their lives, influencing the formation of their identity and how they act. By playing this role in the constitution of moral individuals (citizens) and contextualizing it in face of the characteristic diversity of an international society, the state eventually paves the way for individuals' rapports, among compatriots and non-compatriots, which are coherent, meaningful and stable in a broader international context.

In accordance with the traditional Neo-Hegelian framework presented in chapter 4, I assume the state is fundamentally characterised by its ability to guarantee *the reciprocity exercise* between equally free claimants. It is as members of a state that individuals can interact with each other taking into account their equal status as independent claimant. They are able to present reasonable claims to each other in the construction of a historically situated system of rights and duties that, as the result of being their rationally scrutinised common will, they can come to understand and identify with as a group. In this exercise of reciprocity, individuals develop independent critical thinking so to assess the roles they are to perform in the provision of a regulated and stable social environment, becoming rationally aware of their communal responsibilities and motivated enough to carry the burdens associated with these responsibilities.

To present my own interpretation of a Neo-Hegelian approach to an international society, it is however necessary to enunciate what I see as being the singularities of this reciprocity exercise taking place through states' institutional mechanisms. First, this

exercise is distinctly marked by *inclusiveness*. It involves people with different backgrounds, skills and interests as well as topics that are as general and varied as possible, relating to all possible aspects of individuals' lives. Even if these individuals cannot identify with all the decisions taken in a public sphere, they are still associated with the basic values that shape the institutions and processes through which these decisions are taken and recognition becomes meaningful. In liberal states, such as the USA, they can still identify with the Constitution's essentials and the general implications of the exercise of citizenship and the state's role.

One may counter-argue by pointing to the fact that individuals' potential participation in a variety of multifunction entities in a global age may well cover such a need for diversity and inclusiveness in individuals' formation. Some reflections by Thompson on the possibility of conceiving the world in terms of specialised communal associations, such as ethnic communities, religious bodies, companies, co-operatives and trade unions, as well as by Held on the possibility of instituting democratic law in a global order through a diversity of self-regulating associations that hold no sovereign power, from states to cities and corporations, illustrate the point.²⁰³ While being responsible for assuring different individuals' welfare needs, these associations would still have the advantage of being competitive enough to contain any abusive use of power by one of them.

This counter-argument however does not account for a second characteristic of this exercise of mutual recognition backed by states. In the exercise of reciprocity that takes place through structurally defined and lasting state mechanisms, individuals can coherently construct *an ensemble perspective of the components of their identity*. As citizens of a state, they contribute and are subject to a system of rights that define the

²⁰³ This argument is implied by Thompson and Held in different ways. When arguing for freedom of associations at an international level, Thompson says "as the powers of states become more limited, we can expect that other communities will take over some of the tasks that governments are now expected to perform. Ethnic communities, religious bodies, even companies, co-operatives and trade unions will be increasingly able and willing to take on the responsibility for ensuring the welfare of individual members." Janna Thompson, *Justice and World Order: A Philosophical Inquiry*, (London, Routledge, 1992), pp. 184. While Held develops the concept of "time-space clusters", by which states can be disconnected with any idea of fixed borders or territories. As he affirms, "sovereignty is an attribute of the basic democratic law, but it could be entrenched and drawn upon in diverse self-regulating associations, from states to cities and corporations." David Held, *Democracy and the Global Order: From the Modern State to Cosmopolitan Governance*, (Cambridge, Polity Press, 1995), page 234.

various aspects of their private and public life. In this interpretation, the state not only performs a formative role in individuals' lives, through the exercise of mutual recognition taking place in public deliberation, but also a coordinative one by offering individuals the possibility of consciously grasping the various social roles they perform in their lives, such as family member, professional, religious person and member of an ethnic group. State institutions and practices amalgamate a collective vision of priorities that affects the different aspects of individuals' lives. Such a coordination, which results from individuals' direct or indirect participation in the formulation and implementation of public policies, is not clearly guaranteed by multifunctional agencies, whose relationship is marked by diffusion of interests and power.

Third, and mostly important to define its singularity, the exercise of reciprocity is guaranteed by the *enforceable power* of states to be widespread and regarded as fundamental in defining social rapport. Contrary to multifunctional agencies or other forms of governance provided by an increasingly influential international civic society, state's authority is endowed with the legitimate use of force and not derived merely from negotiating skills, habits, informal agreements or shared premises. Thanks to this legitimate use of force, state's authority can guarantee compliance more effectively. Implied in this observation is the idea that relations of reciprocity among individuals can more successfully work inside a state's institutional framework than in alternative arrangements, which cannot completely override forms of non-reciprocal relations.

Fourth, the exercise of reciprocity implied in the rapports of citizens is *historically situated*. It relates to interactions that take place in a circumscribed territory and at a specific time – here also considered in terms of levels of socio-economic development. These *differences in space and time*, as embedded in states' structure, substantially affect the way the ethical role of states is defined. That is so because these differences imply partiality in the way the moral development of individuals can be perceived and achieved.

To consider the extent to which these historical contingencies acquire significance in my framework, let me gather some of the main arguments questioning the possibility of a global state in the contemporary literature of justice and then contrasting them with my own understanding of reasons why the main units of an international

society (ethical states) should be seen as historically situated constructions translating differentiated notions of collectivities. There is a set of arguments in the literature concerned with some very specific pragmatic implications of a global state. One of these arguments is derived from a shared perception that there are high personal and collective costs to be paid for giving up political arrangements already established in favour of ill defined and untested institutional frameworks.

A first version of this argument, which gets its inspiration from Kant's reflection on the need for a federation of free states in contrast with a single global authority, is discussed by authors such as Held, in his defence of the compatibility between confederalism and democratic cosmopolitan order, and O'Neill, in her discussion about territorially bounded states and the formation of identities²⁰⁴ It pays attention to the impracticability of a government exercising some public functions, such as the enforcement of a lawful constitution, in a global environment no matter how resourceful this government proves to be. The implicit idea here emphasised is that there is an optimum level of efficiency in the management of public affairs, one that can be more closely approached when the public authority is circumscribed to an environment where it is able to identify the members and co-ordinate their actions.²⁰⁵

Although there is according to O'Neill no sufficient evidence to back the claim that a supra-national government would be less efficient than particular polities in exercising and enforcing power or attending to circumstantial limited demands, the argument on managerial costs of a global state leads to the consideration of an important point. The representatives of a global state might be more authoritarian in order to

²⁰⁴ This argument was implied by Kant when defending a federation of free states and later on acknowledged by authors such as Held and Nardin. This last author proposes a normative account of the international system based on the existence of various poles of influence with similar power capabilities, which refers back to the notion of Concert of Europe in the 17th Century. See Immanuel Kant, "Perpetual Peace: A Philosophical Sketch" in Hans Reiss (ed.) , Kant Political Writing, pp. 102-105; David Held, Democracy and the Global Order: From the Modern State to Cosmopolitan Governance, Polity Press, Cambridge, 1995, page 229-233. and O. O'Neill, Bounds of Justice, (Cambridge, Cambridge University Press, 2000), pp. 171-172.

²⁰⁵ A complementary version of this argument calls attention to the lack of willingness of existing political communities to give up already well-established mechanisms to validate their authority. One form of interpreting this lack of willingness is to consider the social costs implied in the political communities' surrender of their sovereignty. Looking from the perspective of the decision-making process, public representatives could have their manoeuvre power to shape the formulation and implementation of policies curtailed. David Held, Democracy and the Global Order: From the Modern State to Cosmopolitan Governance, (Cambridge, Polity Press, 1995), pp. 229-230.

achieve their goals. Historical evidence to support this point might be, for instance, the record of empire states.²⁰⁶ Given the fact that it can represent a hindrance to individuals' self-awareness through their independent use of critical abilities in the public deliberation of a common way of life, authoritarianism is an alternative to be, if possible, avoided.

A second version of a pragmatic argument about the possible implications of a global state refers to the gradualism of individual's social attachments, derived from Hume's thoughts on morality. For Hume, individuals' sentiment in favour of justice between individuals is derived from natural benevolence coupled with self-interest.²⁰⁷ Non-benevolence among individuals tends to increase once they are less in contact with one another and the mechanisms responsible for forging their sense of identification gradually weakens. Applied to a global state, this reasoning leads us to think that the decrease of connective feelings among its members could more drastically affect individuals' moral formation in the sense that they would be less prone to develop trust among themselves and share the burdens of acting fairly with one another.

The two cited arguments are worthy of consideration when defending diversity of units forming an international society so far as they have implications for the development of a moral agent. But they are, from my viewpoint, fundamentally limited. Their concerns are too pragmatically centred in the combat of the malevolent effects of a global state and therefore prone to the possible defence of a variety of social arrangements besides the political communities. They are far from discussing the singularities of the states of an international society and from providing elements for constructing an argument on why differences in space and time (among historically constructed ethical states) should be considered of key significance in the characterisation of these units, with deep normative implications for the well-functioning of international society.

In view of these observations, John Stuart Mill's analysis of the effects of diversity on the cultivation of individualities provides a more revealing explanation for the significance of historical contingencies. This is all the more relevant when considering the potential influence this analysis has in the current discussions about

²⁰⁶O. O'Neill, *Bounds of Justice*, p. 173. For authoritarian procedures in empire states, see Eric Hobsbawm, *The Age of Empire 1875-1914*, (London, Abacus, 1994), pp. 56-84.

²⁰⁷J. L. Mackie, *Hume's Moral Theory*, (London, Routledge, 1995), pp. 114-117.

multicultural societies undertaken, for example, by Kymlicka who claims that these societies are more able to revise its forms of life and re-assert its fundamental political principles by incorporating alien impulses.²⁰⁸ For John Stuart Mill, only when coping with an adversary founded on the existing differences of human interests and situations can the human race achieve high standards of development.²⁰⁹ Following this reasoning, global institutional arrangements could lead to the suffocation of innovative thinking so far as it facilitates the standardisation of tastes and behaviour among individuals through the homogenization of the basic structures that define the social environment where these relations take place. Therefore, these arrangements must be avoided.

By indirectly emphasising the link between the development of individualities and the singularity of a social environment that is necessarily historically situated, John Stuart Mill signals the reasons for which in my own Neo-Hegelian interpretation geographically and timely differences are fundamental in individuals' moral development. A social environment, and the way it is organised over time and across space, is the primordial locus where individuals can contextualise, and therefore have a clear grasp of, their basic capacity for thinking and acting towards otherness on a moral basis. A historically situated system of rights embodies a singular understanding of a collective way of life, meaning common interpretations and evaluations about what is generally accepted as individuals' leading good lives. These interpretations reflect shared experiences and a socialisation process that, while helping to define the singularity of a particular public political culture, offer concrete meaning to individuals' thinking capacities and actions. Therefore, they constitute a more coherent comprehension of where they stand as distinct moral personalities.²¹⁰ When extended to the macro-level of

²⁰⁸ See Will Kymlicka, *Multicultural Citizenship*.

²⁰⁹ John Stuart Mill even equates the amount of eccentricity in a society to the amount of genius, mental vigour, and moral courage necessary to bring innovation to it. John Stuart Mill, *On Liberty*, edited by Stefan Collini, (Cambridge, Cambridge University Press, 1995), pp. 72-74.

²¹⁰ Habermas' analysis of the democratic State is in line with the argument here developed to a global perspective in which the construction of principles are derived from the effort of politically constituted individuals to establish a dialogue that aims at self-understanding. According to him, "through their socialization processes, however, the persons which a state is composed of at any given time also embody the cultural forms of life in which they have developed their identity-even if they have in the meantime become disengaged from the traditions of their origins. Persons-or better, their personality structures-form the nodal points, as it were, in an ascriptive network of cultures and traditions, of intersubjectively shared contexts of life and experience. And this network also forms the horizon within which the citizens of the nation, willingly or not, conduct the ethical-political discourses in which they attempt to reach agreement

analysis, this argument on differences in the construction of a system of rights can, if accompanied by a presupposition of the partial openness of these societies, contribute to the emergence of a more critical debate about the kind of social order most suitable for the formation of moral agents in general.

Differences in collective ways of life are related to different interpretations of basic principles that establish the pre-requisites for the development of moral agents and guide the formation to a historically situated system of rights. There are two fundamental sources of difference in the interpretation of these principles. One is related to differences in the content of rights as exemplified by liberal societies. Another refers to the form of principles, meaning the reasons given to justify rights. The first source comprehends different views on how values such as freedom and equality will be balanced towards each other and expressed in the form of public policies. Countries such as Germany, Sweden, Finland and Norway give emphasis to the equalisation of levels of welfare and social benefits received by the whole population while countries such as the UK and USA prefer to concentrate on a more robust view of individuals' freedom. The second source encompasses different interpretations of the meaning and importance of the core values that inform general principles and validate the whole system of rights. An illustration is offered by hierarchical societies such as the Islamic countries in the Middle East, which have a far more formal and restricted understanding of the equality principle. That is so because of their tendency to interpret individual rights through the hierarchically defined social roles individuals should perform in society.²¹¹

It is however important to add that a full grasp of these individuals' capacities cannot be obtained without these states being opened to the understanding of each others' particular interpretations of the moral foundations of their systems so as to construct a more regulated and stable international society. Therefore, an added characteristic of the exercise of reciprocity guaranteed by state's mechanisms is that it implies a notion of

on their self-understanding." Jurgen Habermas, The Inclusion of the Other, (Cambridge, Massachusetts, 1998), p.218.

²¹¹ I should make clear that differences in the form of principles is sustainable so far as it does not deny a minimum level of fairness in the interactions among compatriots as well as between them and members of other communities. By that, I mean mechanisms that allow individuals to form and express their own judgements about how to conduct their lives vis-à-vis one another, not jeopardising their ability to constitute themselves as moral agent.

openness to otherness. This openness, as I will demonstrate below, is related to the different manners envisaged by state representatives to grasp these particular interpretations and to acknowledge them in the performance of their common ethical role. These different manners are concomitantly expressed in the definition of foreign influences in a state's internal structure as well as in the terms of interaction among actors taking part in the international deliberation of just principles.

The above characteristics defining the exercise of mutual recognition taking place through a state's mechanisms were presented in theoretically general terms. Let me now briefly discuss some of the elements that can actually form part of an ethical state's internal structure while trying to relate them with the challenges brought by an increasingly interdependent world. The provision of an institutional framework where individuals can develop as moral agents implies states' ability to care for the development of two distinct but interconnected spheres of social interaction and decision making.²¹² On the one hand, the state has to be able to support the existence of a civil society distinct from itself and as lively and diverse as possible so that individuals can pursue their separate and particular interests having a grasp of themselves as independent beings who have differently constituted interests and social attachments. It has in this sense to guarantee individuals' freedom of expression, association and assembly by establishing reasonable criteria for the formation of a thriving but accountable media as well as of associations marked by different purposes or issues, such as ethnic, religious, poverty, education and cultural issues.

On the other hand, the state has to be able to unify these separate and particular wills through individuals' representation in a public process of deliberation about the form and content of a system of rights. Moreover, it has to do so by instilling trust in its available institutions and procedures making individuals feel that their integrity as individually independent thinkers and participants in the dynamics of these distinct civil groups are preserved as well as their voices are heard and have all the same weight in this process of public deliberation.²¹³ In this sense, there should be a democratic system

²¹² M. Hardimon, *Hegel's Social Philosophy: The Project of Reconciliation*, pp. 210-211.

²¹³ It involves trust as Hardimon defines it: "my substantial and particular interest is contained and preserved in the interests and end of another (the state), and in the latter relation to me as an individual." *Ibid.*, p.213.

based on the rule of law, the separation of powers as well as the formation of a class of civil servants responsible for managing the state's affairs in an efficient and impartial way. The state has also to make individuals acknowledge that their participation in public deliberation should not be based on the mere defence of particular group interests. It should express their experience of social integration in a broad sense, as citizens who produce conjointly with others a historical interpretation of moral norms (defining a distinct way to critically assess the claims of each other in the construction of a particular system of rights that actually determines the limits of their liberty) and, therefore, construct a political cultural identity that helps significantly to define their attitudes as moral agents in various contexts.

To be genuinely meaningful, however, this experience of social integration has, however, to be embedded in a historical context, as required in a Hegelian approach. A remarkable feature of the way individuals conduct their lives nowadays is by forging more and more links with non-compatriots in an increasing interdependent world, leading eventually to the empowerment of social groups, transfer of technology and investments at a transnational level. These links, which express in great part an international expansion of a notion of civil society, affect individuals' formation (development of inner abilities, definition of interests and attachments) as well as the way they perceive their political participation in a particular state. Rather than trying to deny these links, there is a need to recognise them, making them meaningful and useful in politico-ethical terms.

More specifically, civil organisations, voluntary agencies, interest groups, private companies, philanthropic foundations, universities and think tanks provide for a range of services, from education and health care to the raising of public awareness of a cause. And this provision of services has been increasingly assuming a multinational scope in terms of applicability as illustrated by the works of philanthropic foundations such as the Bill and Melinda Gates Foundation, an organisation such as Amnesty International raising public awareness of torture or even the actions multinational enterprises take in exercising corporate responsibility. Given their limited interests and their ability to act effectively in defence of these interests, such entities can substantially influence individuals' lives, not only raising their basic standards of living but also making them more aware of how common initiatives can have a structural impact on society. Rather

than choosing to depreciate the activities and the influence of these entities, the states have to institutionally acknowledge their impact in individuals' formation and incorporate them as inputs in the definition of national legislation and policies as well as in the interpretation of international regulative procedures, to enhance their ethical appeals and re-affirm themselves as central to citizens' development.

In these terms, the Hegelian recommendation that individuals should make their political voices heard, through their active engagement in groups of civil society and not merely in an atomistic way by making use of a right to a universal suffrage (voting), is reinforced. Its strength should be viewed thus in connection with the potential ethical role states are to perform in individuals' moral development in an increasingly globalized social environment.²¹⁴ The influence of foreigners in a society has to be regulated so as not to destroy the proper national political environment where ethical attitudes are instilled in individuals. It could be argued that until most recently, this regulation was mainly dependent on an internal debate among citizens of a state about the definition of criteria to regulate the participation of non-compatriots in the construction of a distinctively political culture. With the increasing pace of the globalization process, regulation nonetheless begins to depend more and more on states' ability to agree on the reasons why and on what terms they are prepared to recognise each other's self-determining capacities.

5.2) The Relationship among Ethical States

Relationships among states in an international society are fundamentally marked by their mutual ability to recognise each other as distinctly and independently unified collectivities with ends that are spatially and temporally dependent. Moreover, they are also based on the common understanding that to perform their ethical role in individuals' moral development they should openly exchange viewpoints on their particular interpretations of the founding principles defining the ethical content of their collectivities. This exchange allows them to have a more comprehensive grasp of the

²¹⁴ Ibid. pp. 222-223

role they are to perform in individuals' moral development and lead them to formulate international principles of justice responsible for upholding this development in an interdependent historical context.

Let me elaborate my arguments. The states have to be conceived as single, independent, sovereign bodies that though resting on individuals' consent to attain final legitimacy, have their own dynamics and can act autonomously in accordance with this dynamics.²¹⁵ They are provided with a certain individuality derived from their ability to embody a distinguishable collective way of life, guaranteeing individuals' exercise of their autonomous capacities in the process of defining a system of rights while providing these individuals with a social context and a range of shared experiences that give a common morally motivated meaning to their actions.²¹⁶

To be conceived as autonomous entities that embody these distinctively collective ways of life states need to be in a relation of mutual recognition to each other. Following Hegel, states need one another both in a negative sense (as opposition) so they can distinguish themselves in their singularity and in a positive sense so they can have their individuality affirmed amid other ones. Putting it differently, states need to be autonomous to perform their morally constitutive role in individuals' lives through the construction of a historically situated system of rights, but they can only attain this status when they are recognised by one another in their equal sovereign capacity.²¹⁷

It is however important to make a remark here. The states' need to conceive themselves in a relation of opposition could lead them to grievous disputes unresolved through peaceful means. War is an unavoidable feature of an international system formed by sovereign states that through a process of recognition come sometimes to affirm their distinction in opposition to one another by resorting to force. This being so, the outbreak of war does not always have a bad connotation. As Hegel duly argues, it

²¹⁵ *Ibid.*, pp. 232.

²¹⁶ Rawls makes the same point when referring to the process of socialization as a way of inculcating a notion of justice in the individuals. John Rawls, *A Theory of Justice*, chapter VIII on the sense of justice. See also Jurgen Habermas, *The Inclusion of the Other*, p. 221. In defending cultural rights, Habermas says "the integrity of the individual legal person cannot be guaranteed without protecting the intersubjectively shared experiences and life contexts in which the person has been socialized and has formed his identity. The identity of the individual is interwoven with collective identities and can be stabilized only in a cultural network that cannot be appropriated as a private property any more than the mother tongue can be."

²¹⁷ Shlomo Avineri, *Hegel's Theory of the Modern State*, p.199 and M. Hardimon, *Hegel's Social Philosophy: The Project of Reconciliation*, p.233.

can also be seen as beneficial to the moral development of individuals. It requires of individuals to strengthen their attachments to a specific polity, representing at the same time a test of solidarity with fellow citizens and a proof that the values of civil society are only relative to the common set of values and norms defining a state.²¹⁸ The possible effects of war do not, however, warrant its outbreak. It only shows how best to understand the functioning of states and to take advantage of a fact of international relations.²¹⁹ The analogy to health and sickness made by Hegel and interpreted by Avineri serves to illustrate the point: “only when attacked by disease can one form a judgement of whether a particular body is healthy or not. War is not the health of a state – in it a state’s health is put to the test.”²²⁰

In view of the above Hegelian arguments, I assume that the eventuality of war rather than restraining states’ search for regulatory principles for their conduct, serves as a reminder of the need for these principles given the mediating role ethical political communities are to perform in the development of moral beings. States have a shared interest in establishing a common body of norms and practices that makes their coexistence not only possible but also meaningful from the perspective of fulfilling their ethical role. I mean that they are willing to provide for a safe and well-defined institutional environment through which their citizens are guaranteed not only the exercise of their critically thinking capacities through a historically situated process of public deliberation on the form and content of a system of rights but also the possibility of applying and exploring these moral basic capacities in their encounters with otherness in an increasingly complex world.

More specifically, states have an interest in establishing international principles of justice whose parameters are given by the ethical role they are to perform in individuals’ moral development both at the national and international level, seen here as interconnected spheres. The fundamental subject of just principles becomes therefore the most basic claim any individual can make towards another taking into account the provision of essential conditions to empower them as morally fit interlocutors that can

²¹⁸ See Shlomo Avineri, Hegel’s Theory of the Modern State, pp. 196-197.

²¹⁹ Ibid., pp.196-197 and M. Hardimon, Hegel’s Social Philosophy: The Project of Reconciliation, pp.230-236.

²²⁰ Shlomo Avineri, Hegel’s Theory of the Modern State, p. 199.

exchange independent and critical viewpoints on the constitution of a good life.²²¹ One of the most basic claims individuals can make towards each other refers to their right to be citizens of a self-determined political community (states), in which their exercise of freedom of choice, assembly and expression vis-à-vis one another as well as their participation in public decisions on a fair basis, equally able to express their viewpoints and to make them valid in the process of shaping specific policies (first generation rights), are guaranteed. Given that citizens' enjoyment of civic and political liberties depends on access to subsistence goods (second generation rights), the states should also be seen as the primary entity responsible for guaranteeing the socio-economic well-being of their members.

Although I discuss the self-determination principle and its implications to the well-functioning international society in the next chapter, it is worth here emphasising a further point. Because of the universal reach of its ethical purpose but the historical limitation of its realisation, the principle of self-determination grounds relations among states so far as it is conceived in relation to other sets of fundamental principles, including observance of basic international human rights, non-intervention and the limitation in the use of aggressive means by the states. Furthermore, it must be conceived in relation to a duty of international assistance, based on the realisation that the state can only perform effectively its ethical role at the international level if its citizens are recognised in their moral capacities by all other states' citizens and able to relate with them on the basis of these capacities. It is in the interest of more resourceful political communities to help less capable ones to provide for a distinctive social environment, where the citizens of these last states can flourish as morally fit interlocutors.

As principles of international justice need interpretation so as to become actual guidelines of behaviour to the members of an international society, I therefore assume that states are willing to deliberate on the content of these principles. This deliberation about the content of these principles has to be perceived as a historically situated

²²¹ Rawls defines such individuals' empowerment in terms of access to primary goods. J. Rawls, *A Theory of Justice*, p. 90. Though touching on the same issue, other authors preferred to explain individuals' basic empowerment in different terms. Sen discusses the notion of capabilities, as I stressed in chapter 4, while Gewirth works with the concept of generic features of action. See SEN, A., "Capability and Well-Being" in Martha Nussbaum & A. Sen, *The Quality of Life*, (Oxford, Oxford University Press, 1997), pp. 46-49. A. Gewirth, "Ethical Universalism and Particularism" in *The Journal of Philosophy*, Vol. LXXXV, No. 6, June, 1988, p. 290.

exercise, in which the parties, regarding themselves as equally situated interlocutors, express their particular and sometimes conflicting interpretations of the good life while being open to the understanding of each others' diverse viewpoints. Through this provision of arguments and counter-arguments that are contingently dependent, the parties come to have a broader comprehension of what is involved in the performance of their common ethical duties, whose foundation and scope of application is essentially universal. In its turn, this broader comprehension makes the states more prone to agree on what concerns the morally justifiable liberties of individuals worldwide as well as to define clear standards of behaviour among these states, whose infringement justifies the use of enforcement procedures, including the use of force.²²²

An implication of this argument is that the polities should be willing to accept that the deliberation process will have a binding effect on them, no matter what its outcome. It would not be possible for them to see the deliberation process of the content of just principles merely as a form of obtaining advantages, following the rules only when it is convenient in terms of specific economic or social rewards for them. They have to perceive this process as one involving an effective and long-lasting commitment whose basic premises they can identify with and whose outcomes they are prepared to follow. In perceiving it as so, they should be willing to set mechanisms to guarantee compliance.

Having presented what I see as the fundamental terms of interaction among the ethical units of an international society, let me now contextualise some of these terms of interaction by briefly discussing the actual process of deliberation of just principles.²²³ That will serve not only to illustrate some of the above arguments but also to confront them with the challenges imposed by an increasingly interdependent reality and address the implications of this confrontation for my ethical framework. The deliberation here described can take place in a forum such as the European Union or the United Nations (UN). The former is perhaps the most advanced and dense integration arrangement of states nowadays. But the latter is the most comprehensive international organisation

²²² This interpretation of the content of just principles is in line with Nardin's understanding of international justice. For him, justice will concern those parts of common morality that it is not improper to enforce by incorporating them in positive law. Terry Nardin, "Justice and Coercion" in R. Bellamy (ed.), *International Society and its Critics*, (Oxford, Oxford University Press, 2005), pp.252-253.

²²³ A more detailed analysis of the deliberation of just principles and the possibilities of their enforcement will be presented in chapter 6.

currently available founded on the universal membership of sovereign states. Such an organisation can be perceived not only as a unique forum of debate but also of elaboration of norms and co-ordination of actions among these states aiming at the construction of an international system characterised by universality. In being perceived as such, the UN becomes the focus of my discussion on the deliberation process of just principles.

It is clear that an organization such as the UN, which involves such a diversity of members as well as scope of activities, is bound to suffer from problems of legitimacy and effectiveness. At least it is less able to achieve effective enforcement of its policies than smaller organizations such as the EU. As it is illustrated by the UN 2000 Millennium report and its follow-ups, member states are increasingly being called to act conjointly to minimize the adverse effects of an economically interdependent order, but are still either reticent or unable to do so.²²⁴ States that hold a strong negotiating position in this organisation are afraid of setting precedents that could mean the loss of their discretionary power, as well as of supporting an organisation that suffers from an excess of bureaucratization, lack of resources and diffusion of power. They prefer to address some of these effects by taking unilateral actions or highly limited multilateral actions. While states that are potentially beneficiaries of the actions implied in the minimization of the adverse effects of economic globalisation either do not have at their disposal the skills and resources to get actively involved in the debate or are obstructed from doing so because of the way the power structure of this organisation has been defined.

According to the framework here developed, these problems have however to be addressed in consonance with the need states have to reassess the ethical role they are due to perform. To function as ethical units, as potentially valid creators of a distinct social environment where individuals can constitute themselves as self-conscious moral agents

²²⁴ “*We the People: The role of the United Nations in the 21st Century*”, Report of the Secretary-General (Kofi Annan), United Nations, 2000; “*Strengthening of the United Nations: an agenda for change*”, Report of the Secretary-General, United Nations, 9/9/2002; Resolution adopted by the General Assembly 55/2 United Nations Millennium Declaration, United Nations, 20/2/2002; “*Implementation of the United Nations Millennium Declaration*”, Report of the Secretary-General, 2/09/2003; “*Status of implementation of actions described in the report of the Secretary-General entitled ‘Strengthening of the United Nations : an agenda for further change’*”, Report of the Secretary-General, 5/09/2003; “*In larger freedom: towards development, security and human rights for all*”, Report of the Secretary-General, 21/3/2005.

and relate with otherness on these terms, states need to be able to recognise themselves in their equally self-determining capacity and to translate this recognition into the actual deliberation of regulatory procedures at the international level. Extreme inequalities of power that limit the argumentative capacity of the parties and impose patterns of relations based on patronising attitudes, such as the tendency of more developed states to attribute a backward rationality to developing countries in the definition of issues related to morality and human rights, should be restrained. This kind of attitude tends to underline a power politics perspective based on pre-established or simplistic rational criteria that shape the debate in terms of an antithesis, between those that can be seen and trusted as coherent, well-developed social entities and the others that cannot.²²⁵ It ends up degrading less fitted states in their potentiality to become the unified vehicle of moral self-consciousness for their members. Consequently, it renders these states less aware of their responsibilities as the main provider of a distinctively national environment in which moral agents can flourish, relating with otherness consistently on a fair basis as well as of an internationally regulated environment where the integrity of these moral agents is maintained.

In an increasingly interdependent world, the lack of recognition of states in their potentiality to become the unified vehicle of moral self-consciousness for their members has broader consequences. It ultimately leads to the propagation of actions associated with an uncivil society that denies, because of its inability to understand and identify with, claims of mutual freedom made by non-compatriots and the significance of these claims in the construction of an international order. Examples of the propagation of these actions were given most recently by the string of terrorists' attacks in USA on September 11th 2001, in Indonesia on October 12th 2002, in Spain on March 11th 2004 and in England on July 7th 2005 and in Egypt July 23rd 2005, which threatened individuals' integrity in their origins, no matter their citizenship.

The observations here made have however to be understood in relation to two sorts of concern, leading to quite different implications for my theoretical scheme. One

²²⁵ See F. Dallymayr, "Conversation Across Boudaries: Political Theory and Global Diversity" in *Millennium: Journal of International Studies*, 2001, p.333-334. The same kind of argument sustain the notion of orientalism defended by Jack Donnelly, *Universal Human Rights in Theory and Practice*, (London, Cornell Univesity Press, 1989), Part IV.

thing is to assess how to empower less fitted members of an international society, who potentially share ethical principles based on liberal values but are unable to follow these principles because of their lack of political capabilities and/or economic resources to do so. Another thing is to define the extent to which it is possible to recognise states that, suffering or not from the lack of political capabilities and/or economic resources, contest the liberal interpretations of some fundamental ethical values.²²⁶

The first sort of concern is mainly related to pragmatic measures to reinstate less fitted states in their capacity of being independent vehicles of their citizens' moral-consciousness and therefore an independent and active voice in the search for international principles of justice. As the emphasis here is in these states' ability to be recognised in their self-determining capacities, their government holds primary responsibility for finding the most suitable way to attain good governance (democracy, accountability, respect for human rights, citizenship) and formulate effective social policies, targeting critical issues such as poverty and education. Help from more developed countries has to come in the form of coordinative initiatives to diminish the burdens brought on less developed countries by the process of interdependence, such as debt relief, market access and the envisagement of programmes to increase private and foreign investments. It also has to be accompanied by strategies that take into consideration the fact that recognition can only be attained if these less fitted parties learn how to make effective their potential self-determining capacities. The UN Secretary-General's recent pledges and the joint initiatives launched by countries such as Brazil, India and South Africa concerning the reform of the UN Security Council, so as to make it more legitimate and effective, obtain from this viewpoint real significance.²²⁷

As a follow up of the measures, there should be a formal acknowledgement of the role played by groups in international civil society in helping less fitted states to realise

²²⁶ In a Rawlsian framework, these societies are categorised as burdened and decent peoples. The first kind of peoples lacks "the political and cultural traditions, the human capital and know-how, and, often, the material and technological resources needed to be well-ordered." The latter kind of peoples is non-liberal societies that "meet certain specified conditions of political right and justice and lead its people to honour a reasonable and just law for the Society of Peoples". See John Rawls, *The Law of Peoples*, (London, Harvard University Press, 1999), respectively on page 106 and pages 59-60.

²²⁷ Concerning specifically the Secretary-General's recent pledges on the reform of the Security Council, see "*Strengthening of the United Nations: an agenda for change*", Report of the Secretary-General, United Nations, 9/9/2002, p. 08.

their ethical functions. As their activities more easily permeate social life in these states, these groups are in a position to help the government to identify key policy issues, to grasp their population's perception about these issues as well as to assist in the implementation of public decisions. Therefore, they should be increasingly represented in an international forum of debate and deliberation about principles of justice such as the UN. From this perspective, the UN Secretary-General's call made in his 2002 report to improve modalities of interactions between the UN's system and civil society groups while preserving these groups' consultative status in international meetings and conferences in order to strength human rights at the country level is a welcome step towards a more legitimate process of decision making.²²⁸

The second sort of concern has nonetheless broad normative implications for my theoretical scheme and here it will be dealt with in a separate section. It derives from the fact that the ethical arguments till now defended regarding states' constitution and their relationship is clearly based on liberal values (freedom and equality). They do not incorporate states that question to what extent freedom and equality are to be seen as "sine qua non" values for the development of moral individuals. In being seen thus, they can be accused of being too narrow in their scope of application, mainly when thinking about the constitution of the world today. Liberal and Islamic values, as well as their possible clashes, are being randomly interpreted and incorporated in the discourses of groups of an uncivil international society today, as is the case with Al Qaeda. In the face of these possible accusations, it becomes fundamental to evaluate to what extent these states can be recognised as members of international society in light of the ethical framework here presented and therefore effective participant in the process of deliberating about international principles of justice.

5.3) The Recognition of States Holding Different Understandings of Ethical Values

From the ethical framework here envisaged, disagreement on the basic ethical values of freedom and equality could be accepted so far as it offers new elements in the

²²⁸ "Strengthening of the United Nations: an agenda for change", Report of the Secretary-General, United Nations, 9/9/2002, pp. 24-25.

process of unveiling the means through which individuals could morally flourish. It is in respect to this condition that societies holding different notions of ethical values could be recognised by an international society and included in the process of deliberation of just principles. The object of consideration is above all societies that hold comprehensive views of the good, recognising for example individuals primarily as members of a hierarchical community and then deriving their basic rights from the common value attributed to this hierarchical order. But these societies can still perform, even if not fully, the basic ethical functions suggested in the above section. They are able to protect the most basic economic and social human rights, respect the rule of law, consider some level of fairness in the application of laws and conduct public affairs by mutual consultation, paving the way to secure a minimum level of independent critical thinking, equity and reciprocity for their citizens.²²⁹ Besides that, they can be seen as not willing to impose their comprehensive doctrines on other states by making use of force or making use of unlawful means to obtain what they want at the international level. This unwillingness to impose their views leaves them open to understand the function of reasonable disagreement in the construction of international just order, though not necessarily on the strict terms proposed by liberal societies.

An example of my point about states holding different notions of ethical values can be constructed in terms of the recent historical developments of Iranian society. Soon after the Islamic Revolution, there was a lively debate about which institutional concept of an Islamic Republic should prevail in the 1979 Constitution. A consensus among intellectuals and some leading politicians eventually emerged. The guardianship of the community (acting as the main Jurist in respect of the Koran and the sunna – the Koran as interpreted and enforced by the traditions of the Prophet) would be represented by a well-informed figure, accepted by the majority of the population as the source of moral conduct. His authority would be balanced by a parliament and a president elected by universal suffrage as well as by the independence of the legislative and judicial branches. This consensus however ended up being in real terms undermined by the radicalisation of Khomeini's religious position and his unwillingness to respect the

²²⁹ In spite of being more general, my characterisation of these societies is close to the one made by Rawls on decent hierarchical societies. John Rawls, *The Law of Peoples*, pp. 64-67.

maxim that no formal intrusion of religious expertise could be accepted in how political affairs are conducted.²³⁰

The possibility of thinking of a notion of consensus in the above terms and attaching to it a modernist interpretation of Islamic ethics, following the line emphasised by Hashmi in his interpretation of international society, leads to my characterisation of ethical and yet non-liberal states. In this interpretation, the guardianship would act as a form of supervisor of the ethical framework provided by the Koran and the sunna, understood here as a unified moral code and religious source of the law. This moral code could be seen as establishing basic notions of individual rights, equity and reciprocity according to the Koran's understanding of the mutual rights of Muslims ("no one truly believes until he wishes for his brother what he wishes for himself" and "the whole of a Muslim for another Muslim is inviolable, his life, his property, and his honour") and its reference to the believers as those who "conduct their affair by mutual consultation".²³¹ Moreover, this moral code paves the way to the emergence of an international society consisting of good believers as well as unbelievers each to be "brought by God", founding it in the possibility of individuals' right moral judgement based on reason and not necessarily on faith.²³² In this last understanding, reasonable disagreement among states of the international societies and interactions on the basis of that assumption could eventually be envisaged. The eventual contradictions, omissions or historical gaps present in this moral code would be settled among religious scholars mainly by appealing to reason and in connection with the inputs provided by a politically organised population.

I am aware that the formulation of the argument in these terms leads to the kind of charges brought against Rawls by authors such as Kuper and Caney on the possibilities of other forms of social arrangements, particularly related to Rawls' description of "decent societies".²³³ The notion of societies holding different conceptions of ethical

²³⁰In what concerns the prevailing political perceptions of the actors involved in the draft of Iran's 1979 Constitution see C. De Bellaigue, In the Rose Garden of the Martyrs: A Memoir of Iran, (London, Harper Perennial, 2005), pp.101-102.

²³¹S. H. Hashmi, "Islamic Ethics in International Society" in David Mapel & Terry Nardin (eds.), International Society: Diverse Ethical Perspectives, pp.228-230.

²³²Ibid., p. 220.

²³³Concerning Rawls' description of decent societies, see John Rawls, The Law of Peoples, pp. 66-68. Concerning the criticisms of Kuper and Caney, see A. Kuper, "Rawlsian Global Justice: Beyond *The Law of Peoples* to a Cosmopolitan Law of Persons" in Political Theory, Vol. 28, No. 5, October 2000, pp. 648-

values as here described implies in fact the allowance of intolerant practices against the population (restriction of knowledge, state control of information, denial of education, gender discrimination), impeding their moral development by restricting their autonomous exercise of reason. The implication is that individuals' moral claims at the international level could be taken less seriously in liberal societies.

My answer to these criticism is that there is a difference to be made between, on the one hand, states that, though sharing distinctive ethical values, contribute to individuals' moral development even if in a restrained way and, on the other hand, states that are victims of intolerant regimes, animated by the narrow interests of a religious and political elite as in the case of Iran. It is precisely on the need to envisage different ethical frameworks to individuals' moral development, without ruling out the achievement of meaningful interaction among the main units of an international society, that my analysis is concentrated. I rely on the fine perception that a common ground for agreement among polities has not to be necessarily based on a similar take on the good.²³⁴ Intelligibility, and with that the possibility of meaningful interaction, can be achieved even when diversity of opinion refers not only to a limited dissonance on the content of international just principles that guide their behaviour but also to the reasons why these general principles should be regarded as significant to individuals' moral development.²³⁵ While serving to underline this point, the argument here presented implicitly addresses the complexities of the present international dimension. It would suggest that existing communities that hold controversial views on the notions of individuality and social order should, within the limits of possible interaction, be allowed to engage as active

653 and Simon Caney, "Survey Article: Cosmopolitanism and the Law of Peoples" in The Journal of Political Philosophy, Vol. 10, No. 1, 2002, pp. 99-104.

²³⁴ I am here making a point against extreme perfectionism, which considers only one best take on the good. On the definition, see T. Honderich (ed.), The Oxford Companion to Philosophy, (Oxford, Oxford University Press, 1995), p. 653 and A. R. Lacey, A Dictionary of Philosophy, (London, Routledge, 1996), p. 337. I come back to this point in chapter 6.

²³⁵ In this regard, it is worth referring to Berlin's point against cultural relativism and in favour of plurality. For him individuals can find the values of other different and distant cultures unacceptable at first sight but "if they open their minds sufficiently they can grasp how one might be a full human being, with whom one could communicate, and at the same time live in the light of values widely different from one's own, but which nevertheless one can see to be values, ends of life, by the realisation of which men could be fulfilled." I. Berlin, The Proper Study of Mankind: An Anthology of Essays, (New York, Straus and Giroux, 1997), p. 9.

participants in the deliberation of principles of international justice to broaden the debate about the validity of these principles and offer them more legitimacy and effectiveness.

Let me further elaborate my point and its implications for the construction of an ethical framework. In line with the liberal position defended by Rawls in his analysis of “decent peoples”, I support the view that states that do not share liberal ethical values should be accepted as *bona fide* members of an international society. However, in contrast to Rawls, I do not see the case as one of accepting them in this capacity till they abide by liberal values. To accept this condition is to misinterpret the kind of exercise of mutual recognition that should be taking place among ethical states.²³⁶ To portray toleration in this way is to understand liberal values as the only ones that are reasonable and therefore the only ones that pave the way for a meaningful consensus at the international level. As Caney observes, disagreements between liberal societies and societies that are guided by different ethical values (decent peoples) would be treated as a given. They could eventually be softened when these last societies after being exposed to liberal values and institutions suffer changes.²³⁷ Reciprocity of treatment at the international level would be based on a notion of contempt and not on the mutual respect of the parties aiming at the rational re-assessment of the beliefs, and the presuppositions derived from them, by which their different societies abide.

Even if it can be proved that liberal values and institutions are better vehicles to form a motivated moral agency and states can agree on improving their human rights records on liberal terms, this notion of reciprocity of treatment based on states’ ability to position themselves as open enough to take their claims seriously and recognise them as similarly fit interlocutors remains essential to achieve that goal. That is so because the existence of any ethical state (including one based on liberal values) and its ability to perform its basic role in individuals’ formation depend in the long run on deep considerations of counter-arguments in the search for a universality that is historically constructed. In more pragmatic terms, it depends on the construction of international just

²³⁶According to Rawls, “liberal people should have confidence in their convictions and suppose that a decent society, when offered the respect by liberal peoples, maybe more likely, over time, to recognize the advantages of liberal institutions and take steps toward becoming more liberal on its own.” John Rawls, The Law of Peoples, Harvard University Press, London, 1999, p. 62.

²³⁷ Simon Caney., “Survey Article: Cosmopolitanism and the Law of Peoples” in The Journal of Political Philosophy, p.107.

principles that are directed towards the preservation of its citizens' integrity and eventual exploration of their identities in an increasingly interdependent world. But to be successful, this construction depends on states' broader comprehension, through their ability to be seriously open to each others claims, of the different ethical frameworks (spatially and temporally situated interpretations of moral visions) that in fact help motivate individuals to act on the basis of these principles.²³⁸ As I argue in the next section, this broader comprehension has to involve a certain openness to the claims of others in the sense that states have not only to act on the basis of reasonableness but also to be morally sensitive to capture what cannot be necessarily translated by a reasonableness structure that is historically constrained.

5.4) The Argument for Moral Sensibility

In Hegelian thought and much of the contemporary neo-Hegelian literature on justice, including the analysis of Rawls and Frost, the deliberation process of international just principles constitutes only a means for individuals to maintain their integrity as moral agents. It is not considered whether the deliberation of just principles represents in itself an opportunity for individuals to further exercise their moral capacities. My arguments on the need states have to approach difference in a more constructive way so as to grasp the foundational elements that help constitute moral agency and support these principles lead to a criticism of this position. If it is to become effective in grasping these foundationally ethical elements, the process of formulation of just principles will have to be seen as an exercise in which state representatives and groups of international civil society come to develop openness to otherness in a broader

²³⁸Taking into account Habermas' framework, I could say that despite their generality and their encompassing need to refer to the individual as a moral agent unconstrained by specific needs and interests, human rights principles are closely related to the rules of argumentation that shape the public debate about the form and content of just principles in each community. Rather than regarding these historical constraints as problematic, we should understand them as a necessary component in the attempt to grasp non-biased international principles. It is taking into account a dialogue among individuals living in different social contexts, who are willing to confront their partial apprehensions of how they should live, that these principles can be grasped. About the interpretation of principles of human rights see Jurgen Habermas, The Inclusion of the Other, Section IV.

sense, combining reasonable arguments with a moral sensibility that could eventually capture what cannot be translated by reasonable thinking.

Rawls and Frost seem to assume beforehand that there is little to be learned from individuals' participation in the deliberation process at the international level. They seem to agree that the main characteristics necessary to constitute a moral agent - the independence of thought and the ability to act on the basis of reciprocity - are fully developed inside national borders, up to the point that they can participate in the construction of a common system of law. There is no substantial reason to depart from the common liberal standards of deliberation, which are taken to be the most persuasive for building consensus, but to reflect on them using reasonable claims on one another.²³⁹ By accepting beforehand liberal standards of deliberation, they play down the possibility that the confrontation of different notions of collective lives can bring more reflection not only to the formulation of principles but also to the individuals' perception of themselves through the participation of the state representatives and groups of international society in this deliberation. By reflection, I mean that participants in the process of deliberation are obliged to test further the validity of the different interpretations of justice, together with their comprehension and attachment to communal ethical values, which are imprinted in the historically constructed systems of rights. They look forward to a compromise that expresses a deeper understanding of how to cope with the limits of these particular interpretations while attempting to maintain individuals' moral integrity no matter what their citizenship is.

Referring to an overlapping consensus in The Law of Peoples, Rawls says "the parties are not given a menu of alternative principles and ideals from which to select, as they are in *Political Liberalism*, or in *A Theory of Justice*. Rather, the representatives of well-ordered peoples simply reflect on the advantages of these principles of equality among peoples and see no reason to depart from them or to propose alternatives."²⁴⁰ The same logic of there being no need to depart from them is applied in the interactions

²³⁹ See Frost on citizenship rights and the society of democratic states, pp. 115-118. Mervyn Frost, Constituting Human Rights: Global civil society and the society of democratic states; John Rawls, The Law of Peoples, pp. 35-37.

²⁴⁰ I am more specifically relating this point to the following works: Mervyn Frost, Constituting Human Rights: Global civil society and the society of democratic states, Routledge, London, 2002; Jürgen Habermas, The Inclusion of the Other; John Rawls, The Law of Peoples.

between well-ordered and decent societies (non-liberal societies). As I pointed out in the above section, well-ordered societies should recognise a decent society as a *bona fide* member of the Society of Peoples because that would constitute a method for encouraging the changes a decent society needs to make to be accepted as a fit interlocutor in the international scenario.²⁴¹ In this last interpretation, the acceptance of societies that somehow do not share similar interpretations of just principles is regarded prominently as a method of co-optation. This perception is echoed in Frost's analysis when he specifies the reasons to accept non-liberal societies as equal members in the system of states:

[My recognition is not a 'once off' gate-keeping act in which I allow you in or turn you away from some bounded area (in this case the domain of those who play chess), but involves a commitment on my part to educate you into this practice. For your part you recognise me as one who can do this and you indicate your willingness to learn in any number of ways.]²⁴²

Such a way of portraying the relations among states in terms of the co-optation efforts made by liberal states towards non-liberal ones so as to derive inclusive principles of international justice is too narrow-minded. It treats the international society as an arena where liberal values are imprinted and not necessarily as an entity whose well-functioning depends on a broader grasp, through the ability of states' representatives to exercise further their openness to the historically situated claims and the world's perceptions of one another, of the fundamental ethical elements supporting its structure.

In doing so, it tends to understand the formulation of international just principles as a discussion already framed by strictly established procedures of argumentation that echo liberal ideals rather than evolving statements, derived from a consensus among different historically situated interpretations on the best conditions to care for the constitution of a moral agent at a certain time. In this last interpretation, the contradictions and inconsistencies arising from the process of deliberation of these principles should be seen as a necessary part in an attempt to grasp a universality that is

²⁴¹ For Rawls, toleration of difference is seen as an instrument of co-optation. See RAWLS, J., The Law of Peoples, p. 62.

²⁴² Mervyn Frost, Constituting Human Rights: Global civil society and the society of democratic states, p. 154.

not defined by the best argument but by a deeper understanding of these different interpretations. As the formulation of the two main UN covenants, and their subsequent follow up in formal conventions and discussions that recognise the right of self-determination of nations, the right of women and the right to development, illustrate, these contradictions and inconsistencies cannot be completely overridden. But they can be limited by participants' common effort to understand each others' position in a way that is more sensitive to the anthropological particularities, which permeate their particular system of rights while helping to define their identities, and to derive changes from this deeper understanding.

Let me elaborate further my criticisms and my own view on the need to base the process of deliberation of justice principles on a notion of openness to otherness, which includes the possibility of participants relating to each other in terms of both reasonable thinking and moral sensibility. I would say that there are three problems in the way contemporary authors, such as the ones cited above, approach international deliberation. First, it overlooks the point that reasons given to validate a viewpoint (international principles in this case) are context sensitive and therefore can always be fallible. The individuals' reflective capacities embodied in ethical entities (states) are necessarily limited by the proper historically situated conditions through which they are developed. Any single view presented by state representatives expresses just a partial view of just principles. In this sense, the persistence of doubt has to be regarded as an integral part of discourse building, the process of deliberation. As there should be a justification of these principles, there should always be possibilities of contesting the validity of this justification, its presuppositions and the various forms of developing them. Consequently, the non-liberal interpretations of basic principles should not be discarded a priori because short of the reasonable criteria brought forward by liberal societies. It should always be considered as potential counter-arguments that have their comprehension limited by the use of alternative variants to interpret reality.

Second, it seems that from these liberal interpretations the international deliberation is focused on the presentation of what is the best argument – in the constant, if I may say so, unilateral attempt of developed liberal states' representatives to state their values and interests. They tend to see others, above all representative of states that differ

in terms of values, interests, political organisation and economic development, as people whom they have to surpass - to observe what is faulty in their arguments so as to re-state the points made in a more persuasive way. I would say that this process of deliberation is valid as a learning process so far as it focuses on individuals' ability to be explicit, logical, clear reasoning, and finding way outs in the argumentation. But I also believe that this learning process tends to be limited because it focuses on a particular understanding of the active role some interlocutors are supposed to perform— to present better arguments so as to control the direction of the conversation. Here, the deliberation can be understood more as a competition than an exchange of viewpoints, in which individuals representing different lifeworlds are really open to each other's claims. At this case, it would not represent an opportunity to question different common identities.

Third, for the above interpretations the deliberation process is dictated by the notion of the reasonableness of an argument and not, as I want to suggest, centred in this notion while open to other forms of interaction. This viewpoint is problematic not because it shows the desirability of reaching universal assent that can have a binding effect on interlocutors with different historical backgrounds through reasonable argumentation but because it stresses that this is the only possibility of communication that is worth pursuing. It does not pay attention to the fact that to perceive otherness the individuals involved in the process of deliberation have to be willing to know not only how the rationality incorporated in the process is structured but also what is not captured by these argumentative forms of communication. What I want to stress is the fact that there should be awareness by the main interlocutors of the international society about the limits of rational forms of argumentation in the understanding of human interactions and how these limits affect the proposal of principles to regulate these interactions. To try to grasp the various elements used or left out of the argumentative process of deliberation is as important as to defend a reasonableness criterion as the main parameter to establish meaningful interaction with one another. It is through this constant effort of allying reasonable claims with a broader comprehension of the deliberation process that representative of states and active groups of international civil society best develop a sense of otherness and secure the existence and possible comprehension of counter-arguments.

Though this last point has been particularly addressed by Habermas, I think it can also be extended to cover the understanding of the deliberation of international just principles in a forum such as the UN where the states and representatives of an international civil society are largely represented.²⁴³ For Habermas, the justification of norms is based on a discourse situation (discourse ethics) where individuals fairly disposed towards one another try to agree on a set of rules that embody an interest common to all affected. The process of agreement is seen as a process of argumentation in which individuals try to rationally motivate each other, relying on the binding effect of the offer. And language is regarded as an instrument to deliver these rational arguments. But there is something odd in this picture, which is related to the way Habermas takes the language structure for granted. If the way we apprehend meaning is culturally driven (and I believe Habermas conceals it in the description of lifeworlds as an integral part of development of individualities), the way we select words and construct sentences should say as much about ourselves as the message we are trying to convey. And by pushing the argument further, the way participants in a process of international deliberation introduce themselves, make allusions and refer to other forms of narratives is as important as the assimilation of rational arguments in the comprehension of otherness. In this sense, it is worth quoting Dallmayr when summarising Coole's criticism of Habermas:

[For Coole, the important point is to overcome the binary dualisms of inside and outside, reason and non-reason. The alterity suppressed by the discursive model – and valorised by postmodern 'deconstruction' – is not some 'mystical or primordial' unreason, as Habermas suggests, but rather 'the fault-lines and ruptures, the differences, which structure language itself. A prominent mode of such differential language is modern art and aesthetics, culminating in a 'radical aesthetic of everyday life'; a domain where Habermasian discourse remains particularly weak or inadequate. Again, it is important here not to erect aesthetics into 'a model of an alternative, harmonious subjectivity or politics' but rather to it as a 'mode of subversive/creative intervention – one that operates on prediscursive levels'. In socio-political terms, Coole stipulates as a minimal requirement that communicative reason and discursive democracy be supplemented by 'an appreciation of the prediscursive and non discursive levels on which power and

²⁴³ In reference to this point, I am making use of the views defended by Dallymar and Gaita. R. Gaita, A Common Humanity: Thinking About Love and Truth and Justice, (London, Routledge, 2000), pp. 37, 85. And F. Dallymar, "Conversation Across Boundaries" in Millennium: Journal of International Studies, 2001, p. 343. D. Coole, "Habermas and the Question of Alterity" in P. D'Entreves & S. Benhabib (eds.), Habermas and the Unfinished Project of Modernity, (Cambridge, Polity Press, 1996), p. 225.

alterity circulate', such that postmodern strategies or 'decodings' can be seen as a crucial dimension of emancipatory politics.]²⁴⁴

The critical points of the debate on ethics here underlined serve to pave the way to a comprehension of the international deliberation as an opportunity individuals have, through their political representatives and groups of international society, to exercise further their moral capacities in an environment marked by the exacerbation of cultural differences, which are imprinted in the construction of particular systems of laws. This complexity brings difficulties to the process (slowness, problems in definition of terms), but at the same time forces these individuals to find ways of understanding and persuading each other, and in many ways to adjust their particular forms of reasoning, so as to build consensus. Therefore, their participation in the process can become a transformational experience, in which they have not only to go beyond the mere use of the particular reasoning derived from a national debate but also to explore other forms of interaction, of capturing the essence of otherness to find moral terms of coexistence.

In my view, the formulation of just principles does not just demand from the participants the establishment of an overlapping consensus on the basis of a reasonable criterion, which is largely derived from liberal societies. It also demands from them to go beyond this minimum and make the process a dynamic exercise in which as representatives of citizens of different political communities (liberals and non-liberals understood in their different levels of socio-economic development) they come to explore in a new way their different sense of identities. Participants have to make an effort to understand the construction of moral norms at the international level both as an exercise of autonomous reasoning aiming at reciprocity of action and as a way of working through their sensibility so as to increase their perception of the other or, more precisely, the message this other is trying to convey.

I mean by working through their moral sensibility the ability participants have to listen to other claims in the following way. First, it comprehends participants' ability to be mutually decentred, not taking into account their individual ability to win an argument

²⁴⁴ F. Dallymar, "Conversation Across Boundaries: Political Theory and Global Diversity" in Millennium: Journal of International Studies, 2001, pp. 343-344.

but to understand the different viewpoint the other has. Second, it means that the participant has to focus on what message the other wants to pass. In this sense, the individual has to be prepared, if necessary, to give up momentarily their particular way of reasoning, to look from inside the social roles the other lives by and to let their intuitions guide their actions.²⁴⁵ Third, the participant has to respect the inalienable dignity of the interlocutor, owed to him as a human being, no matter how much his way of reasoning is questionable.²⁴⁶ Fourth, he has to be aware of their limited capacity of apprehending and applying knowledge. Particularly, they should be lucid about how historical circumstances surrounding them influence the construction of who they are and the perception they have of the distant other.

Such an interpretation of the international dimension is, as I mentioned before, a speculative exercise about what the international dimension can add to the expression of individualities. In my view, the advantage of states forming part of this sphere is not so much related to the further development of their citizens' ability to think but rather to the effort they are supposed to make, as citizens of different political communities, to understand how thinking can be diversely structured.²⁴⁷ In this effort, they have to become sensitive to the different ways individuals come to express themselves as singular collectivities and can thereby come eventually to embrace in a more affirmative way an international moral code based on reciprocity of treatment among equally positioned free ethical collectivities.

5.5) Concluding Remarks

My characterisation of the international society is based on the claim that the states need to be recognised in their self-determining ability to be the ethical locus where

²⁴⁵ See R. Gaita, A Common Humanity: Thinking About Love and Truth and Justice, (London, Routledge, 2002), p. 59.

²⁴⁶ This issue is particularly addressed by Gaita when referring to the need to explore "a sense of individual". See R. Gaita, A Common Humanity: Thinking About Love and Truth and Justice, (London, Routledge, 2002).

²⁴⁷ It does not reflect *per se* another sphere of moral learning. The moral agent is already characterised as a thinking agent when going to the international sphere, capable of understanding and following norms on the basis of a moral code.

individuals can, as active participants in the construction of historically situated systems of right, develop themselves as morally fit agents. In light of this characterisation, the plurality of states offers a spectrum of possible ethical experiments at a time, which can deepen our common understanding of this development and help us to envisage mechanisms to carry on this development in an increasingly interdependent world.

In more pragmatic terms, I argued that to become of any concrete significance to the well-functioning of an international society today, the formulation of principles of justice has to be perceived by the states as a common effort to reflect on the different and changing understandings of the needs of a moral individual as they are expressed in their spatially and temporally defined system of rights, to construct a consensus on these needs as well as to back this consensus with effective political measures. In function of its dynamic nature, this exercise of reflection and consensus building has to be based on a notion of *openness to otherness*. The actual participants of this process (state representatives and groups of international society) have to be prepared to interact on the basis of reasonableness while not forgetting that the structure of reasonableness is also historically dependent, and much linked to liberal values and how currently developed societies incorporate these values in their structure. They also have in this sense to exercise their moral sensibility, their ability to capture the message the other cannot convey solely through the use of reasonable arguments.

Overall, the discussion here undertaken was limited to the construction of an ethical framework to understand the structure and dynamics of an international society as well as to derive principles of justice capable of sustaining this society. There were only indirect, and mostly insufficient, references to the content of these principles and to the methods of enforcing them. In the next chapter, I will turn my attention to this particular issue.

CHAPTER 6: On International Obligations

The previous chapter discussed the basic structure of an international society, the states and their foundational interactions given the ethical role they are to perform in individuals' moral development. The formulation of international just principles was only partially addressed, as the expected outcome of these interactions. It is my intention in the following pages to analyse in a more detailed way the core principles of international justice, understood as the most basic demands ethical states, constituting the main actors of an international society, can reasonably present to each other and from which mutual obligations can be derived.

In line with the main claims presented in chapter 5, I argue that the self-determination principle is the founding principle of the international society. It should not only be recognized as such but provided for. The most basic demand ethical states can make towards each other is related to their right to be recognised in their distinctive capacity of being the collective vehicle of the moral self-consciousness of their citizens. Moreover, it is related to their right to openly relate to each other in this capacity so as to have a more comprehensible view of the moral foundations of their roles as well as the mechanisms to secure the realisation of these moral foundations in a diverse environment. Because it is fundamental to states with an interest in carrying out their ethical functions to relate to each other as fit interlocutors in an open exchange of viewpoints, self-determination is an entitlement that political communities not only formally hold against each other but also conjointly become responsible for making it effective worldwide.

More specifically, self-determination, which is here seen as a right individuals enjoy as members of a community, is endowed with both an individual and collective dimension. On the one hand, it is derived from individuals' moral need to present themselves in relations of mutual recognition, independently participating in the construction of a historically situated system of rights. It is in this sense limited to the observance of the rights individuals have to present themselves as politically and socio-

economically fit agents in the participation of this construction. On the other hand, self-determination refers to individuals' need to recognise themselves as a group with a common and historically constructed sense of identity, within which they ground their attitudes as a moral agent. Ethical states, as being the guarantor of basic individualistic rights and the embodiment of this distinctively collective way of life, are provided with a certain autonomy and can act on this basis to make moral claims on international society. These moral claims however have to account for the fact that states' autonomy has to be internationally recognised and its ethical meaning further explored in an open exchange of viewpoints about the construction of their historically situated system of rights.

Nevertheless, this understanding of a principle of self-determination is faced with three fundamental sorts of problems, whose analysis has implications for my ethical framework. First, some states are not necessarily interested in recognising other states' ability to act autonomously and in establishing meaningful interactions with these other states so as to unveil the moral foundation of their particular system of rights. Second, many states are not able or willing to provide for basic individual human rights that underpin the claim to self-determination. Third, states do not necessarily feature a homogeneous notion of collectivity or an inclusive understanding of multinational society, in which different ethnic collectivities can exist within a state's structure and find themselves identified with it. Such an observation leads me to question the extent to which the state can still be said to act autonomously in the name of its citizens as well as to what extent the claims of self-determination made by specific collectivities, which do not completely identify with the way of life embodied by a state, can be in itself justified.

It is straightforward to note that each of these problems arises from a historically based notion of ethical diversity as explained in my interpretation of a neo-Hegelian framework, one in which states and individuals are necessarily constrained by space and time in their actions. I argue that these sorts of problems should be coped with by a duty of assistance and, in some extreme cases, a duty of intervention. These duties are legitimately founded on international community's intrinsic interest in upholding a principle of self-determination to secure the ethical role it is supposed to perform in individuals' moral development. A defence of these duties cannot however be completed without considering the kind of institutional mechanism international society actually

needs to possess so as to fulfil these duties. Although these mechanisms are already embodied in the UN system, I argue that they need to be critically re-appraised in terms of the ethical framework here defended so as to attain more legitimacy and effectiveness.

The chapter is divided into four main parts. The first part briefly explores the reasons why a self-determination principle should be seen as foundational to an international society whose main members are states. I explore the two dimensions of the notion of self-determination as a right individuals hold conjointly as active participants of a collectivity. The second part contains an analysis of the main sort of constraints posed by reality in the fulfilment of this self-determination principle. As a consequence, I come to explore the reasons why duties of assistance and eventually intervention could be imposed on members of an international society, given their interest in interacting with each other in a self-determined way. The third part explores the kind of mechanisms an international society needs to put in place so that assistance and intervention are regarded as justifiable and effective from an ethical viewpoint. Finally, I present some concluding remarks.

6.1) The Principle of Self-Determination and its Limits

The founding principle of an international society is the principle of self-determination of its ethical units. The states have to be perceived as freely able to determine their political status and pursue the social, economic and cultural aims that render possible the lives of their citizens *qua* moral agents. They should be equally recognised in their independent capability of defining a distinct collective way of life to the benefit of the individuals, whose moral capacities are realised both in their relations of mutual recognition in the definition of a historically situated system of rights and in the exchange of ethical viewpoints carried out primarily by their state representatives, which pave the way to a normative international environment.

The self-determination principle, as it is here understood, derives from individuals' right to be part of a collectivity (state) responsible for allowing them to exercise their capacities for moral thinking and to relate to each other on this basis. In so being, it is part of a broader philosophical-ethical construct that is different from current

political-legalist interpretations of a right to self-determination - as they are generally expressed in international instruments such as the UN Charter, the Political and Civil Rights Covenant, the deliberations after the De-colonization Committee during the 60's and more recently the UN Declaration of the Rights of Indigenous Peoples. This differentiation is specially profound in what concerns its dynamic and yet interconnected understanding of the individual and collective moral dimensions of this right. As my arguments will show, this differentiation would serve to make more precise the criteria for understanding the moral foundation of these actual rights and to suggest institutional improvements in line with my framework to fulfil them in a more effective way.

As a philosophical construct, the principle of self-determination is attached to well-defined elements of conditionality. Internally, the self-determination principle is, on the one hand, conditional on states' observance of basic human rights principles that guarantee their citizens' integrity as autonomous thinkers and ground the exercise of mutual recognition these citizens are supposed to be part of. It is limited, more specifically, to states' ability to guarantee to their citizens the enjoyment of first (political-civic) and second (socio-economic and cultural) generation rights. Concerning first generation rights, individuals should be able, for example, to form an independent viewpoint, voice their beliefs and opinions without suffering discrimination (freedom of expression and assembly) and to be guaranteed a fair trial. They should also be able to participate on an equally free basis in the political decisions that ground the existence of a community and have an impact on their lives. Concerning second generation rights, the individuals should be entitled to the means to secure their subsistence (food, health care, regulated forms of work) as well as to define a socio-cultural life of their own (access to education, to ways of forming a family and to be part of cultural engagements in a community).

It is however important to note that first and second generation rights, though usually treated as distinctive categories, are to be understood as closely interdependent and indispensable in individuals' exercise of mutual recognition taking place inside an ethical state.²⁴⁸ Economic rights, by guaranteeing individuals' access to the bare means of subsistence and setting the necessary conditions that enable them to attain economic

²⁴⁸ A common example is the universal recognition of these rights in two distinct UN Covenants.

self-sufficiency, constitute a pre-requisite for citizens of a state to present themselves as viable interlocutors. Basic legal, civil and socio-cultural rights guarantee the ability of these citizens to constitute themselves as independently valid sources of claims and yet active members of groups of a civil society, without suffering unjustified interference from a state's structure. Political rights allow these citizens to influence on an equal basis the fundamental rules and structures defining a society, making them able to identify themselves not anymore as distinctly interested groups of a civil society but as a broader unified collectivity.²⁴⁹

On the other hand, a self-determination principle is not reducible to states' ability to offer mechanisms through which their citizens can enjoy the above individualistic sets of rights. Since citizens should, along with the full enjoyment of their individualistic rights, be able to identify themselves as a unified will in the actual construction of a temporally and spatially defined system of rights, this principle should also be understood in relation to states' ability to embed a distinctive common political culture. A state has also to be seen as the personification of a collective interpretation of rights and duties, which offer its citizens a common sense of identity that help them to contextualise their actions and to make these actions meaningful from the perspective of how they ought to conduct their lives as moral agents.

Externally, states have to act so as to recognise each other in their distinct and independent ability to provide for a structured social environment where moral individuals can flourish. This recognition however does not merely translate into respect for differences in collective ways of life. It also, and most importantly when taking into account the ethical framework here developed, becomes a means by which states' pursue their broader interest of independently exchanging ethical viewpoints on the moral foundation of their historically situated system of rights and constructing international norms in view of this exchange. Aware of their limitation, derived from their temporal and spatial constraints in being the ethical locus of individuals' moral development, the states look forward to relate to each other in a way that renders possible to their citizens

²⁴⁹ On the affinities between rights that can transcend the conventional dichotomy of political-civic rights and socio-economic and cultural rights, it is worth seeing Jack Donnelly, Universal Human Rights in Theory and Practice, p.27.

the enhanced exercise of their moral capacities in an open and regulated international environment.

These elements of conditionality apply to the understanding of a notion of states' autonomy – and its status as a moral entity in international relations. So far as states act in respect of the internal and external elements of conditionality that underpin their ethical existence, they can be regarded as distinctively collective entities, holders of certain rights and duties in the international society. They have the right to demand respect for their independent way of constituting themselves as a political community. They are not supposed to interfere in the internal affairs of one another, making use of aggressive or patronising attitudes that either degrade or deny their autonomy to take collective decisions. They have the right to demand non-interference in the collective affairs of one another. Moreover, they have the right to be treated fairly, as equally free members capable of taking decisions and agreeing on resolutions that affect the functioning of an international society. By the same token, they have the obligation to respect international agreements and diplomatic resolutions agreed on the basis of this fairness.

The above conditions to states' exercise of autonomy are nonetheless far from being achieved in reality. The historical adversities states face have fundamental implications for the understanding of moral duties according to my ethical framework. To analyse these implications, I divide in three main categories the reasons why the states are presently deprived of fully exercising their autonomy. First, a state is prevented by members of an international society from exercising its capacity for acting autonomously because of its outlaw behaviour at the international level. Second, a state has its autonomous capacity undermined by either its inability or unwillingness to uphold the most basic individual rights, related to their citizens' integrity as independent moral agents. Third, a state's capacity for acting autonomously is questioned because, whereas it formally upholds individualist rights, it fails to embody a distinctive understanding of collectivity which all their citizens can clearly identify with.

The first category is the most straightforward one. It involves outlaw states that forcefully negate the existence of an international society based on ethical purposes. Typically, these states try to impose their own comprehensive view of the good by

making use of aggressive means. Examples of these states are Germany with its expansionist behaviour during the two Worlds Wars and, more recently, Iraq in its attempt to annex the territory where Kuwait's main oil reserves are situated. In both cases, the states were dominated by totalitarian regimes that rely on a strong ideology and the charismatic figure of a leader to manipulate their citizens' opinions and to make these citizens support confrontational actions against members of an international society.

Comparatively, the second category involves a greater level of complexity since it refers to deficient states where individuals' enjoyment of socio-economic rights and/or political and civic rights are being jeopardised. Concerning individuals' restraint in the enjoyment of socio-economic rights, there are three issues worthy of consideration. First, these restraints can be derived from a state's deficiency of natural resources. They result from an adversity that is closely related to the arbitrary way territories were in the first instance explored by indigenous people and further re-distributed in the light of a historical process marked by conquests, empire building and de-colonization. It is worth pointing out however that states suffering from such adversity are prepared to react in different ways. For example, despite the scarcity of natural resources, Japan was clearly able to transform itself into a successful industrial economy by relying in part on well-targeted public policies after the Second World War. Second, there are cases marked by a state's inability to use with a certain level of effectiveness the natural and/or human resources it has. An illustration is provided by countries such as Brazil, with vast amounts of natural resources and a young labour force. Third, many states are unable to cope with the effects of an interdependence process. Underdevelopment has to be seen not merely as a fact attributable to domestic constraints and weaknesses but also as a structural phenomenon linked to the form international economic relations and an international division of labour assume today.²⁵⁰

Concerning state's inability to uphold political and civic rights, two cases are of particular interest. First, there is the case of authoritarian states that suppress political and civic rights while maintaining a certain level of socio-economic standards for their citizens. An example of this kind of behaviour is offered by Latin American

²⁵⁰M. Bedjaoui, "The Right to Development" in M. Bedjaoui (ed.), International Law: Achievements and Prospects, (Paris: UNESCO, 1991), p. 1181.

authoritarian regimes in the 1970's, which purposely restrained the political and civil rights of citizens and defended a closed market in the name of economic growth.²⁵¹ A different example is offered by Iran after the Islamic Revolution of 1979. Since then, the regime has been able to maintain a certain level of socio-economic standards for its population while tightly controlling the judicial system, restraining intellectual and artistic activities and promoting gender discrimination.²⁵² Second, there is the case of states that are plagued with corruption in their political system, inefficiency in their bureaucracy and weak mechanisms responsible for enforcing the rule of law. In critical cases such as Liberia and Somalia, where these conditions are aggravated by socio-economic factors, the situation can easily slide into civil war, eventually leading to anarchy.

The third category relates to the fact that the autonomy of the state is questioned not because it fails to fulfil the above cited individualist rights but because it fails to guarantee to all their citizens the collective right to identify themselves with the construction of a distinctive collective way of life. In great part, this problem is caused by an old process of colonisation, which showed no regard to indigenous peoples' rights, and more recently by the mal-formation of multinational states after the peak period of decolonization 1960-1970. In this period, colonial boundaries were accepted as authoritative, without any proper concern for ethnic-linguistic differences and for obtaining the consent of the people affected.²⁵³ Two cases are particularly worth analysing here. First, there is the case of discriminatory states in which a minority group suffers discrimination (unfair treatment) by the majority of the population. Political arrangements, despite securing to the overall population the enjoyment of citizenship rights, still cannot make effective the voice of a minority in the constitution of a

²⁵¹ Concerning dictatorships in Latin American during the 1970's, I am particularly referring to the military regimes in Brazil from Castello Branco to Figueiredo's presidencies and in Chile with Pinochet.

²⁵² It is necessary to point out that the democratic innovations demanded by the reform movement, represented by President Mohammad Khatami, from the 90's have increased the public awareness of the significance of individuals' liberties and wider political representation. Such public involvement has nonetheless been suffering setbacks given the pressures put on the Legislative and Judicial systems by more conservative clerics. See A. Ashrafa & A. Banuazizi, "Iran's Tortuous Path Toward "Islamic Liberalism", *International Journal of Politics, Culture and Society*, Vol. 15, No.2, Winter 2001.

²⁵³Y. N. Kly & D. Kly (eds.), In Pursuit of the Right to Self-Determination: Collected Papers & Proceedings of the First International Conference on the Right to Self-Determination & the United Nations, (Geneva, Clarity Press, 2000), Preface, p. 07.

distinctive way of life. As Charvet describes it, “the agreement on particular reasons still reflect solely or disproportionably the way of thinking and values of a majority culture.”²⁵⁴ Illustrations of this sort of discrimination is provided by the suffering of indigenous people in Australia and the Kurds in Turkey. Second, the case of a national minority group that despite living in a just ethical state still feels the need to express their distinct commonality. Examples of this group are provided by the Québécois in Canada or the Scottish in the United Kingdom. The distinctive cultural affinities of the members of these groups have a significant impact on the way they perceive and participate in public deliberations.

The different reasons here presented to explain why the states undermine the realisation of its ethical potentiality when confronted with the actual dynamics of a historical process have, fundamental implications for my theoretical framework. They necessarily lead me to account for whether and on the basis of which conditions the members of an international community can legitimately present another set of moral claims to each other. More precisely, do more fit states have an obligation to provide assistance to less ones? Do they also have an obligation to intervene, by making use of force or indirect mechanisms such as socio-economic sanctions, in states where assistance is not an option because of either the gravity of the domestic socio-political situation or the international outlaw behaviour of their authorities? In case members of an international community do have these kinds of obligations, how are they supposed to fulfil them? In response to these sort of questions, I come to argue for complementary principles of justice in the next section.

Before proceeding, it is however important to note that these questions are prone to arise in a historically situated account of the international ethical process. In contrast to the other theories of international justice addressed in this thesis, my framework should be able to address these issues not as imperfections, counter-facts or exceptions of the theory, but rather as intrinsic features of an ethical process. In these terms, the complementary principles of justice defended in the next section should not be seen as principles established on *ad hoc* basis, in the sense that the international community

²⁵⁴ John Charvet., “What is Nationality, and Is There a Moral Right to National Self-Determination?” in Simon Caney, D. George & Peter Jones (eds.), National Rights, International Obligations, p. 66.

resorts to them when is faced with a non-ideal situation. They should be seen as bearing an inherently logical and ethical relation to the core of an international system of justice. In other words, they have a functional status and purpose that is born together with a notion of an international system of justice, whose realisation is based on historical processes, and should therefore be regarded as ethical duties in harmony with the founding principle of self-determination.

6.2) The Need for Complementary Principles of Justice: The Duties of Assistance and Intervention

Reasons to ground states' duty to assist or intervene have to be thought in connection with the ethical considerations that found a self-determination principle as well as with the specificities of a historical process that limit the realisation of this principle worldwide and eventually give rise to claims for securing the means to its upholding. Considering an ethical framework, states' fulfilment of their ethical role is partially dependent on their ability to mutually recognise each other as independent vehicles of moral self-consciousness and openly exchange viewpoints on the basis of this recognition. Given that, they do have a general interest in upholding a self-determination principle worldwide but this interest has still to give way to a duty of assistance and intervention in the form of potentially reasonable demands members of an international society are entitled to present towards each other when facing adversities in fulfilling their self-determining functions. A reasonable demand would, according to this framework, be based on the claim that the adverse conditions that actually affect some states' autonomy have to be perceived as part of a historically interdependent process in which all members of an international society are involved and through which their realisation as ethical units are made possible. State's duties to assist or intervene would therefore be based on the claim that the adversities suffered by some states are in part derived from the dynamics of a historical process that all states have continuously taken part in. They are also based on the claim that these adversities, by affecting the capacity of particular states to form morally fit citizens, can have a potentially substantial effect on the functioning of all members of an international society *qua* ethical units. It is however

important to underline that differences in the kind of adversities faced by states give rise to different interpretations about the fulfilling of these international obligations to assist and intervene.

Let me emphasise the essential characteristics of my argument by contrasting it with communitarian and nationalist interpretations of a self-determination principle and of the kind of international obligations it imposes on the members of international society. As I pointed out in chapter three, communitarians and theorists of nationalism give emphasis to a non-interventionist principle of justice to the detriment of a more engaged understanding of the responsibility members of an international community have in providing for the means to secure states' self-determining capacities worldwide. The emphasis on the discretionary ability a sovereign state has to provide for a distinctive environment in which morally motivated personalities can develop leads to a notion of international principles centred on non-interventionist principles.²⁵⁵ Other principles of justice, such as the observance by the states of international standards of human rights for their population, are formulated as a by-product of this formal interpretation of the non-interventionist doctrine. An agreement on international standards of human rights on this view is above all to be perceived as an agreement among states recognising fair national practices so they do not suffer undue interference. It is not necessarily viewed as a common commitment founded on a moral obligation they have as members of international society, which in part requires of them the abdication of their discretionary power in favour of concerted actions to make these practices effective worldwide.

According to my ethical framework, this particularist understanding of the basic content of international just principles leads to fundamental flaws. By wrongly presupposing that the polity can be regarded as the ultimate instance of social interactions that defines individuals' identity as a moral agent, it simplifies the interests of state *qua* ethical units. It particularly overlooks the fact that states are historically situated constructions that, while primarily responsible for individuals' development of their basic capacities, are part of a broader dynamics that help them realise their ethical nature.

²⁵⁵ This minimalist view, implying a thin and non-engaged view of just principles, can be agreed by the diverse lifeworld perspectives without demanding from them an evaluation of the reasons why they become fundamental or a common effort to validate them. To a certain extent, the particularists (communitarians and nationalists) tend to reflect this view when defending the subjective value of nation and community to the development of individuals. See chapter 2 on this point.

They need to interact with each other in a self-determining and yet open way not only to define the limits of their authority but also to fully grasp the possibilities of securing their citizens' moral integrity and the capacity of these citizens to relate with otherness in a meaningful way in a context today marked by interdependence.

If a state's ethical realisation is carried on in light of interactions it develops with its citizens as well as with the other main units of international society at a particular time, the adversities affecting some of these units' ability to act autonomously is a state's particular concern. These adversities that affect some of the main units of international society have to be understood as part of a historical process that all states helped and continuously help defining either by taking actively decisions or passively accepting the development of events. This argument does not however serve to minimize, by blaming the dynamics of a historical process, the wrong decisions taken by the representatives of these states. It serves above all to remind us that a state's political autonomy is not exercised in a historical vacuum. It is exercised and ethically realised when immersed and challenged by a reality. If today this reality is marked by an increasing process of interdependence that can offer humanity a large spectrum of ethical collective experiments through which states can better grasp their roles in individuals' moral formation, it seems inappropriate to argue that the polities (state) are morally condemnable only when they are inflicting direct or indirect harm to each other, understood as a threat to their sovereignty or the way their citizens choose to live their lives as a collectivity. It would be equally condemnable when they fail to act conjointly to alleviate the socio-political conditions that impair states' ability to act as vehicles of individuals' moral self-consciousness and to present themselves as fit interlocutors in the organisation of international society. It is also equally condemnable when failing to act promptly to condemn the abusive and discriminatory practices of certain states against their own citizens as well as the citizens of other states. In these terms, principles that respond to adversities of a historical process, such as principles of assistance and intervention, are to be seen as consistently complementary to a self-determination principle, because they are intrinsically required for its actual realisation.

The argument in favour of complementary principles of assistance and intervention however needs qualification. A duty to assist or intervene has to be

interpreted in face of the kind of adversities confronted by the affected state as well as the kind of responses to these adversities that are favoured by members of the international community, whose main objective is to constitute a stable environment where ethically fit collective entities can relate to each other in an open and constructive way so as to guarantee their citizens' moral development. Only from this viewpoint, outlaw, deficient or discriminatory states, as defined in the last section, can be the justifiable recipients of the right to assistance or objects of soft or forceful intervention from the members of an international society.

In face of these considerations, let me now qualify the complementary principles of justice. The undue interference of an outlaw state in the affairs of a member of international society is not admissible because it forcefully denies the collective right of the attacked states' citizens to act in a self-determining way. It purposefully makes use of force to impose their comprehensive view of the good and reject the notion that international interactions should be, to the benefit of individuals' moral development, the expression of reciprocity among self-determining and equally situated collective ethical entities. Two concerns should therefore guide the interpretation of the rights of the attacked state and the duties of the international community. First, there is a need to restore the original status of the state that suffered the unjustifiable attack. Second, there is a need to make the outlaw state to understand and respect the fundamental values that sustain international society by being exposed to the practices of ethical states. It is through this exposure that the outlaw state could eventually transform itself, becoming able to participate in international society and abide by its rules.

Considering these points, the attacked state has the right to defend itself and to demand assistance from the other members of international society when doing so. Its actions however have to be ethically driven and accountable to members of the international community. Since its objectives are both to restore its self-determining status and to persuade the outlaw state to participate in the practices of an ethically driven international society, the attacked state should primarily make an effort to re-establish a diplomatic dialogue with representatives of the outlaw state with the help of international society. Once this option fails, it has the right to take more drastic measures, demanding from the international community the application of political and socio-economic

sanctions against the outlaw state and then declaring war against the outlaw state. The declaration of war can solely be made in self-defence. Moreover, it requires from the attacked states, as Rawls specifies, “to foreshadow during a war the kind of peace they aim for and the kind of relations they seek.”²⁵⁶ In line with its ethical commitments during the war, the attacked state has to make a distinction of treatment between leaders and officials, soldiers and population, minimizing the costs for this last category, as well as making peace proposals that are reasonably acceptable and do not have the intention of denigrating the enemy. Furthermore, it has to prioritise the use of consensually formed international mechanisms to oversee the use of force and the rebuilding of national institutions in the outlaw state.

In comparison with outlaw states, one could argue that deficient states’ inability or lack of means to provide for basic individualist rights (socio-economic and civic-political rights) do not necessarily represent a threat to the well-functioning of international society that requires a prompt and decisive reaction from members of international society. This kind of argument however has to be balanced by the ethical view here defended that in a context marked by the indistinctness of political borders, citizens who are not invested with the necessary means (rights) to take autonomous part in a reciprocity exercise among compatriots leads to their being unfit moral agents at the international level, unable to understand the significance of the construction of far-reaching international just principles and identify with them. Their inability to have their basic rights fulfilled can more easily lead them to resort to their membership in groups of an unregulated civil society so as to cover their primary needs and to develop social roles. As this membership does not necessarily provide for members’ ability to interact with each other and non-members in a morally meaningful way (respecting individuals’ equal right to autonomy), it can pave the way to violent acts, such as the recent string of terrorist attacks referred to in the last chapter, that jeopardise individuals’ integrity no matter where they live.

The need to restore the state as the collective vehicle of moral self-consciousness by making it able to guarantee to its population the effective exercise of basic rights is therefore the basic reason giving rise to an international society’s duty to assist. Given

²⁵⁶ John Rawls, *Law of Peoples*, p.96.

this need, a duty to assist has to be interpreted and fulfilled taking into account the fact that is up to the representatives of this state together with their citizens to make a prognosis of its problems and to define strategies to tackle them. Assistance has to be based on a consensus given by this deficient state and has to be translated into co-operative initiatives at the national and international level that make it possible for this state to exercise its autonomous capacities. For example, it would require the establishment of industrial partnerships or technological cooperation with more developed countries to develop the incipient economy of this state as well as cooperative endeavours in education and health matters. It would also require the active involvement of the deficient state in decisions taken by supra-national institutions - such as the IMF and the World Bank, concerning the allocation of funding and development of projects at the national level.

In addition to these considerations, it is important to note that the development of a deficient state has been curtailed not merely by its own wrong doings but by adversities that were derived from a process of inequitable international economic relations that all members of international society take part in. In this last interpretation, deficient states are to be seen as potentially holders of the right to development against the international community. It is a right these states hold to the benefit of their overall population who have the development of their moral capacities in great part imperilled by the constraints imposed by this inequitable international economic system on the economic development of the societies they are members of. To fulfil this right, the international society should envisage conjoint initiatives, such as the Doha round of negotiations at the WTO dealing with unfair economic subsidies and trade barriers, which liberate these deficient states from current arrangements which unjustly restrain their economic development.²⁵⁷

In this category of deficient states, it is worth presenting some additional considerations on cases marked by problems linked much more to abusive political practices than to a lack of resources or a state's representatives' managerial skills. As I pointed in the last section, members of political elites tend to use the state machine to curtail the civic-political liberties of the population and to impose a closed economic

²⁵⁷ M. Bedjaoui, "The Right to Development" in M. Bedjaoui. (ed.), International Law: Achievements and Prospects, p. 1180.

regime. Although these closed societies do not represent a direct threat to the international community, the level of deprivation suffered by the population in terms of civic-political rights do affect their constitution as autonomous moral agents and can in the long run undermine the well-functioning of international society. The existence of these regimes not only contradicts the founding values of international society but also brings the tangible risk that, once these societies are more exposed to an interdependent process, its population will lack the fundamental means to deal with otherness in a morally meaningful way. In view of these considerations, the international community does have a duty to press for changes in these regimes. Once these deficient states deny the possibility of changes, international society has the right to make use of soft intervention mechanisms, including the empowerment of groups of civil society (providing critical scrutiny of a state's activity) and the use of tactics to name and shame the practices of the regime.

In parallel, it is necessary to consider the case of failing states such as Liberia and Somalia during the 90's, whose institutions are so weakly formed and maintained that the state is on the brink of anarchy, without a legitimate or clearly identifiable government. In these cases, the lack of state mechanisms helping the moral formation of citizens can easily give rise to violent civil wars that can directly affect the performance of ethical functions in neighbouring states, paving the way to regional political instability. Considering the practical impossibility of having the consent of these countries' governments about the forms of receiving assistance, humanitarian intervention becomes the primary duty of the international community as exemplified in UN resolution 794 providing for the deployment in Somalia of a UN force.²⁵⁸ But the fulfilling of this duty should not represent an end in itself according to the ethical framework here presented. It should represent the first step in the direction of bringing the different parts of society to a negotiation table so as to discuss the terms of re-building an autonomous state's institutions.

Apart from the categories of outlaw and deficient states, there is the category of discriminatory states that do not fully recognise the rights of a minority of the population

²⁵⁸ Concerning the case of Somalia and the argument for humanitarian intervention inside the UN, see C. Greenwood, "Is there a right of humanitarian Intervention?", The World Today, February 1993, pp. 37-38.

to identify with the construction of the common political culture. As they cannot effectively make their voices heard in the construction of a system of rights given the power of a dominant minority for that matter as in Iraq under Saddam Hussein, they feel that they cannot really identify with the ethical principles and the kind of collective responsibilities they impose. Even if they can eventually come to understand these ethical principles, they cannot see the actual significance of abiding by these responsibilities in their daily lives, in the actual interactions they establish with otherness. In this case, the discriminatory state has an ethical duty to re-evaluate its political practices in the light of a negotiation process with the minority, whose objective is to re-instate the right of this minority to fully enjoy the collective dimension of a right of self-determination. In its turn, the international community has the duty to oversee the fairness of this process of negotiation. This duty is derived from the fact that a failure of the government in fulfilling a duty to undertake negotiations and pursue them on reasonable grounds, respecting constitutional principles, may undermine its claim to be legitimately recognised as the collective vehicle of moral self-consciousness of its citizens at the international level. Once this failure is shown to be unavoidable, the international community has the duty to recognise the minority's right to secede.²⁵⁹

An exception to the above category, which I pointed out in the last section, is the case of a minority population that though not suffering from the above kind of discrimination, still feels the need to express their commonality. As in the case of Québécois, they feel that there are no sufficient mechanisms at the state level through which they can express and make effective their distinctive political views. But they cannot claim that they are having their fundamental right to be an active part in the definition of a collective way of life undermined by discriminatorily socio-political practices of the state. In this case, secession does not become a right that the international community has an obligation to help upholding from an ethical viewpoint. It can only be accepted on the basis of pragmatic concerns, when a group of citizens'

²⁵⁹ It is important to stress that my defence of the right to secede here is based fundamentally on normative considerations and taking into account a generally cohesive and outspoken minority. In the case of a minority that is spread over the national territory or yet unable to articulate in an effective and cohesive way its demands, as happens with the first generation of immigrants, the right to secede is severely restrained by their circumstantial inability to form and press a claim against the majority.

insistence in expressing their distinctiveness challenges the fundamental constitutional principles of the state, undermining its existence.

As I showed above, international society's duty to assist and to intervene in extreme cases so as to uphold a self-determination principle worldwide necessarily involves qualification, based on the different kind of adversities faced by affected states as well the responses that should be favoured in view of the potential ethical role they are due to perform. This qualification led me to an assessment of derivative claims potentially made by the affected states, such as the rights to development, and to an exemplification of the concerted actions members of international society need to take to fulfil these claims. In the next section, it is my intention to illustrate my main arguments in favour of intervention and assistance by contrasting them with the kind of justification, and further actions, defended by members of the international community for the Iraq war.

6.3) Illustration: The Iraq War

The analysis of the Iraq war serves to illustrate the above arguments on the content of principles of justice. If understood in the larger context of the pre-conditions that led to the 2003 invasion by coalition forces and the efforts of re-building the country afterwards, the Iraq war reveals the kind of challenges the international community faces in terms of enforcing a self-determination principle today. It was Iraq's outlaw behaviour, controversially associated with its insistence in rebuilding military capabilities (Weapons of Mass Destruction – WMD) after the invasion of Kuwait, which primarily led to international intervention and assistance. But the Iraqi government's unwillingness to respect and provide for the basic human rights of its population, both in their individualist (socio-economic and civic-political rights) and collective (e.g. discrimination against Kurds) dimensions were also taken into account in the equation.

Of particular interest here is to analyse how the international community, by the conjoint initiatives of the members of UN or by the restrained multilateral initiatives taken by part of its members, has overseen the rebuilding of Iraq as a self-determined state. I argue that the way intervention and assistance efforts were justified and carried

out drastically contributed to imperil Iraq's potential to become an independent member of the IC, ethically responsible for its actions. This happened not strictly because intervention and assistance were shaped by power politics considerations. States' ability and willingness to use their military, economic and political capabilities to influence one another is a necessary feature of international relations. This happens above all because the international community failed, and in fact continues failing, to acknowledge that intervention and assistance are concepts derived from a historically dynamic view of international relations in which all states have necessarily to present themselves as self-determined units for the sake of their ethical realisation.

Although it was justified by the international community on the basis of Iraq's aggressive behaviour, the last intervention was carried out without effectively accounting for Iraqis' enjoyment of their individualistic and collective rights as members of a political community. Even when human rights issues were considered after an intervention sponsored by coalition forces, they strongly translated a unilateral, if not patronizing, perception of liberal values that did, and continue to do, no favour to the rebuilding of a state as a differentiated collective vehicle of moral self-consciousness to its citizens. In trying to replicate part of their own system of values in another state, the US and its allies ended by denying the fact that they are at the same time the subject and object of a broad historical process.

At the same time that the US and its allies are able to influence the dynamism of this historical process by the leading position they enjoy in the international scenario, they are not able to dictate its course nowadays. Given the effect of an increasing economic interdependence in the movement of goods, services and individuals, they need to reflect on the limitations of their historically situated ethical systems so as to have a better grasp of how to construct a comprehensive international order where their citizens can actively function as moral agents. But the US and its allies cannot properly do so without considering other states in their autonomous and differentiated capacity of being the collective vehicle of moral self-consciousness to their citizens and effectively recognising them in this capacity in the actual construction and interpretation of principles of justice. To overlook this point is to jeopardise the very construction of this order.

Let me be more precise about the argument by recalling the facts and interpreting from my viewpoint the justifications given by members of the international community for the kind of initiatives favoured by them. The 2003 invasion of Iraq comes after US failure in building a consensus among SC members to pass a resolution supporting military actions against Iraq, in order to make it comply with previous resolutions on disarmament, human rights, terrorism, Kuwait prisoners of war and allow UN inspectors to return to Iraq after their removal in 1998. SC passed resolution 1441 on October 2003 demanding Iraq comply with previous resolutions but not allowing the use of force after understanding that Iraq didn't pose a threat to the international community. Despite the UN unwillingness to co-operate with inspector, there was no definitive evidence that Iraq was in possession of weapons of mass destruction. In rejection of this view, US formed the "Coalition of the Willing". Initially with 49 countries, the coalition was sustained by US determination to enforce previous SC resolutions against Iraq as well as to advance strategic objectives against their war on terrorism after the attacks of September 11th.

From an ethical viewpoint, the UN position should have been questioned not so much by its traditional interpretation of the use of chapter VII of UN Charter to prohibit an invasion but by failing to perform its role in the development of events leading to this position. As being subject to the procedures stated in a comprehensive international agreement previously defined by sovereign states, intervention was justifiably perceived by the UN as something to be used as a last resort, once all the other means of persuasion have been consistently exhausted. It avoids its abuse for circumstantial reasons. But on three important occasions it could be argued that the UN failed to carry out its activities in a responsible and effective way. First, reports of human rights violations after Saddam came to power were constantly documented by non governmental organisations - such as Human Rights Watch, the International Federation of Human Rights League and the Coalition for Justice in Iraq.²⁶⁰ Despite passing resolutions formally denouncing these abuses, the UN failed to use all the mechanisms at its disposal to press the Iraq government to improve human rights' records. The UN failed to make extensive use of strategies, such as naming and shaming the government's more controversial directives or

²⁶⁰ In 1988, Human Rights Watch denounced the attacks against the Kurdish population. It released a joint report with International Federation of Human Rights League in 2000 on human rights violation, particularly against women and children.

supporting via financial or technical support the activities of local NGOs' responsible for basic health and educational services. In doing so, the UN reinforced the position of some of the leading member states, who were reluctant to get rid of a government seen as important to cope with the potential threats of an Islamic revolution coming from Iran. Second, trade sanctions imposed on Iraq after the Kuwait war severely affected the civil population. The Oil for Food programme responsible for minimizing the effects of these sanctions on a civil population was done in view of the perception that some member states had about security without any substantial concern about the basic conditions necessary to empower the Iraqis economically or politically. All sales allowing Iraq to sell oil to generate funds to cover for basic services to its citizens were extensively monitored by UN staff and constantly blocked by the SC members, particularly the US. With its decision to treat all infrastructure as being of dual use (military concerns), the US ended blocking in large extent the fundamental goods and services required by a modern economy.²⁶¹ Third, resolutions concerning the inspections of Iraq's military capabilities after the Kuwait war were partially undermined by the perception of Iraq government that these inspections were been infiltrated with spies for purposes other than determining if Iraq possessed WMDs.²⁶²

UN inability to act more responsibly so as to uphold human rights in Iraq is symptomatic of the problems within its structure. At first sight, this inability seems to be derived from the long lasting problem associated with the lack of consensus among its members who tend to act on the basis of their own strategic concerns of short and medium terms while overlooking the best ways to attain its objective of a more secure international environment in the long turn. But looking closer, this UN inability underlines a failure of perception about the best ways to re-define and perform their members' roles *qua* states in a more dynamic environment, where the volatility of threats tend to be higher as the result of the increasing proximity of citizens with different, and sometimes conflicting, political formation and socio-economic background as well as of the intensity of their relationship. Following the arguments presented in chapter five, the

²⁶¹ J. Gordon, "Accountability and Global Governance: The Case of Iraq", *Ethics & International Affairs*, Vol. 20, March 2004, p.04.

²⁶² This view was particularly voiced by the media. See www.news.bbc.co.uk/2/hi/middle_east/301168.stm and www.guardian.co.uk/theissues/article/0,6512,794275,00.html.

international community has a duty to uphold a principle of self-determination not merely in the sense of containing a state's aggressive behaviour but also in terms of assisting this state to exercise its potentially ethical functions both at the national and international levels. In Iraq's case, it would have implied the capacity of UN and its member states to work with Iraq's government to improve its human rights' records not only so that the Iraqi population would become socio-economically empowered but also able to enjoy basic individuals' rights and to express their collective identity in an independent way, contributing to the definition of a distinctive system of rights. Moreover, it would have implied the empowerment of the Iraqi population so that they were able to recognise themselves as holders of this collectively constructed identity in the international forums of discussion and decisions.

The involvement of the US and its allies in the Iraq war captures in a more acute way the current misunderstandings concerning the definition of a self-determination principle and the need to enforce it. The US rationale for the invasion was based on the quest for enforcing previous UN sanctions in view of the faltering co-operative initiatives of a tyrannical regime and its priority concern to deal with what was perceived as a new threat - internationally spread terrorist activities managed by groups (ex. Al Qaeda) who have links with Iraq and neighbour countries. What made US claims particularly strong was its widely publicized intention to link military actions with efforts to re-construct the country on the basis of a democratic regime so as to deal with this new threat.

The argument used by the US and its allies, concerning the distinctive nature of the threat and the inability of available international mechanisms to deal with it effectively, could arguably count as lending support for the invasion. But it certainly does not justify the invasion. The argument that the US was acting on the basis of benevolent purposes - getting rid of a tyrannical regime and enforcing international human rights, while promoting military actions - was fallible because it gave the US the upper hand in interpreting and enforcing the content of universal principles that define an international order. By using this kind of argument, the US ended by rendering obsolete

the proper idea that international norms are the fruit of consensual decisions made by members of the international community and for the sake of its existence.²⁶³

Considering the ethical approach here developed, this view is particularly problematic because it assumes that the polity, in this case the US, is the ultimate instance of social interactions that define individuals' identity as moral agents in an increasingly interdependent environment. It overlooks the fact that the US, even with its unmatched amount of military plus socio-economic power, is a situated socio-political construct that is necessarily part of and increasingly dependent on a broader historical dynamics to realise its ethical potential. In a world marked by people's greater mobility and exposure to different social values, it is unlikely that the US can construct an effective international agenda of action without an open and critical understanding of the different ethical collective perceptions that governs the present system of rights and therefore morally drive individuals' actions. It is this deeper comprehension of the world and critical assessment of the historically limited ethical view that presently direct its policies at the national and international level that can eventually enable the US to perform its leading role in defining international norms, which can be identified by both compatriots and non-compatriots and serve as a guide to their behaviour in an interdependent world.

Regardless of the magnitude of its present political, economic and military capabilities, the US needs to recognise other states as autonomous interlocutors, potential sources of distinctive and yet valid collective moral claims in the actual construction of international institutions and practices. It is in this construction that states can become part of a comprehensive dialogue permeated by exchanges, which allow them to perceive their differences in terms of ethical views and how these differences can shape their national policies in face of an increasingly dynamic historical process. They can more easily develop respect and trust among themselves as well as serve as vehicles for their

²⁶³ This point is also stressed by Nardin in his response to an article defending US intervention in Iraq on humanitarian grounds. According to him, "...the grand rationale shifts the focus of debate from protecting human rights within a decentralized international system to replacing that system with one that is centrally managed by the United States. An American understanding of universal principles defines the new system and American power enforces it. Instead of the balance of power constrained by international law, we have the exercise of hegemonic power unconstrained by international law." Terry Nardin, "Humanitarian Imperialism: Response to 'Ending Tyranny in Iraq'" in *Ethics and International Affairs*, September 2005, Vol. 19, Issue 2, p. 24.

citizens' identification with the principles that provide sustainability to an international order. It follows as an implication of the argument that the definition of moral principles, more particularly the interpretation of a self-determination principle and the establishment of methods to enforce it, should be derived from the consensus of the international community's members relating to each other in an autonomous way. Moreover, it has to be focused on the empowerment of the affected state so that other members could interact with it in an ethical way.

The US failure to understand a duty of intervention and assistance as part of a broad framework that is constructed through consensual decisions of members of the international community and could only be actually fulfilled in respect to these decisions paves the way to forms of action that have severe implications for the functioning of international society nowadays. Without being attached to a consensual framework, the US is more prone to act on unethical grounds, on the basis of uncompromising attitudes, the use of double standards and the defence of its narrow national interests in its international incursions. By helping to build a perception in the affected state that international mechanisms and institutions are merely instruments of an invader for its own short-term benefits and not for the restitution of the affected state as the collective vehicle of moral self-consciousness of its citizens and a fit member of the society of states, these strategies end by undermining the proper functioning of international society.

Some of the procedures favoured by the US after the initial period of intervention in Iraq illustrate the point. First, despite its initial discourse about the need to coordinate humanitarian intervention with military activities and initiatives to support this coordination, the US failed to secure an environment where NGOs responsible for providing relief to the civil population's suffering could safely operate in Iraq.²⁶⁴ Even when NGOs managed to operate, their work was jeopardised by the misleading association established between the USA and humanitarian activities. In the eyes of the population, NGOs' activities were viewed as merely instruments of US foreign policy and therefore not to be trusted. Second, the rebuilding of Iraq on an independent basis

²⁶⁴ N. De Torrente, "Humanitarian Action Under Attack: Reflections on Iraq War" in Harvard Human Rights Journal, Vol. 17, Spring 2004.

was particularly tarnished by the US decision to overlook Security Council Resolution 1483, mandating that Iraq's oil sales, as well as other funds, "be used in a transparent manner to meet the humanitarian needs of the Iraqi people, for the economic reconstruction and repair of Iraq's infrastructure, for the continued disarmament of Iraq, and for the costs of Iraq civilian administration, and for other purposes benefiting the people of Iraq." US Department of Defence issued in 2004 a formal ruling overturning this decision and emphasising that Iraqi funds could only be spent for contracts with companies of the US, its allies and Iraq. In fact, as it was shown by Gordon, the great majority of these contracts went to US companies, a few to the allies' companies and only occasionally to Iraqi companies, reinforcing Iraqi's view that intervention and assistance are mainly instruments of power politics.²⁶⁵ Third, it could be said that the inability of US to make use of effective and reliable mechanisms to punish the gross violations of human rights committed by US forces against prisoners of war (e.g. Abu Ghraib) reinforced not only among the members of international community but also among Iraqi the perception that the US tends to act on the basis of double standards. Arguably, these violations contributed to deepen the population's mistrust of foreign intervention as well to reinforce the civil population's disposition to be fractious and subject to violent outbursts.

The overall implication of the above analysis is that the supposed lack of efficient international mechanisms to deal with threats imposed by an increasingly interdependent world cannot *per se* justify the unilateral or restrained multilateral use of force. For the sake of international society, there is rather an urgent need to re-structure these mechanisms on the basis of a new form of consensus established among its members. In the next section, I present a brief account of the kind of institutional mechanisms international society should actually back so that claims supporting duties of assistance and intervention from the ethical viewpoint here defended can be further subject to interpretation as well as legitimate and effective enforcement.

In the analysis of institutional mechanisms, it will become clearer that complementary principles of justice further project at the institutional level the

²⁶⁵ J. Gordon., "Accountability and Global Governance: The Case of Iraq", Ethics & International Affairs, Vol. 20, March 2004, p. 8

underpinning values of openness to otherness and moral sensibility of my ethical framework, as they were defined in chapter 5. Although these values are presupposed in the definition of the principle of self-determination, they are more pronouncedly exposed in the way members of international society should define international mechanisms so as to interpret and fulfill duties of assistance and intervention.

6.4) The Building up of Institutional Mechanisms to Uphold International Principles of Justice

It could be said that the UN system currently embodies the core of institutional mechanisms responsible for the actual interpretation and enforcement of the content of the international self-determination principle.²⁶⁶ Although initiatives have been launched by UN staff and members to reform these mechanisms, making them more legitimate and effective, they prove to be too restrained. By clinging to a non-dynamic view of international relations, they overlook the fact that these mechanisms should be increasingly regarded as a conjoint initiative of states, translating their disposition to build a universal consensus through openness to each others' historically situated ethical viewpoints for the sake of their citizens' moral realization. Following this reasoning, the effectiveness of these institutional mechanisms will much depend on their ability to translate a notion of partnership of initiatives between best and worst fit members of international society struggling to construct an international environment where these ethical exchanges can actually take place. On the one hand, this partnership will require that members of international society participate in co-operative initiatives with states clearly affected by adversities so as to better grasp the affected state's needs and help them to fulfil their own potentiality to act autonomously. On the other hand, it will require that, during the process of co-operation, these members review the partial views

²⁶⁶ At present, the UN system can be said to embody the core of these institutional mechanisms in the form of resolutions, recommendations and other deliberations arranged under the supervision of the Security Council (responsible for upholding security and peace), the Economic and Social Council (responsible for promoting international economic and social cooperation and development) and the Human Rights Council (established since last February to replace the Commission on Human Rights and responsible for analysing and advising on human rights issues worldwide).

they hold about the essentials necessary for individuals' moral development and the most adequate methods to attain this development.

To clarify my point, let me critically analyse some of the reforms currently proposed by UN staff and member states. On the issue of legitimacy particular attention has been given to the need to broaden the spectrum of representation of the Security Council. This body is considered the most unrepresentative of the UN system while being the most influential given its power to pass or veto resolutions to uphold rights of intervention under chapter VII, concerning situations involving "threats to peace, breaches of the peace or acts of aggression". Until now, discussions on the reform of the Security Council have, as shown by the claims of the G4 (Germany, Japan, India and Brazil) and of African countries (e.g. South Africa and Nigeria) to acquire permanent seats and veto powers in the SC, prioritized the inclusion of new members on the basis of a better geo-political and strategic representation of the international community as well as of the ability of these new members to commit themselves to human rights and to financially support activities of the UN system.

These suggestions of reform are still based on a non-dynamic view of international relations, which are not fully able to cope with an environment characterised by a greater mobility of population and exposure to different social values. In this environment, considerations about traditionally perceived states' characteristics, such as size of population, geographical importance, ability to conform to values and practices currently defined by liberal societies, are *per se* insufficient if not accompanied by the ability of old and new members to serve as congregators of similar understandings of the moral fundamentals underlying national system of rights. It is this last ability, together with member states' willingness to relate to each other on similar conditions (being holders of equal procedural powers in this particular case), that can more effectively allow states to have a broader grasp of their historical limitations and the possibilities of defining international values and valid practices today. In light of these observations, I would say that the UN needs above all to broaden the spectrum of representation in its main bodies accounting for the different possible ethical collective experiences present in the world today. Member states have to be perceived as leading figures in a region in terms of embodying a particular interpretation of moral principles that can be said to

characterise distinctive but yet closely related systems of rights. They also have to be willing to build a dialogue aiming at exchanging ethical viewpoints, which lead to the self-assessment of national and international institutional practices.

A further implication of the points here made is that the UN and member states should also be prepared to re-evaluate the actual functioning of its main bodies on the basis of the fulfilment of states' right to self-determination in its interconnected individualistic and collective dimensions, as I have suggested. In practical terms, initiatives proposed by the UN Secretary General Kofi Annan in his 2002 report, such as streamlining procedures of UN current bodies, focusing on the key functions that define these bodies, establishing a tighter kind of co-operation among them as well as working in partnership with NGO's and regional organisations, have to be balanced by initiatives leading to a comprehensive analysis of the different historically situated possibilities of interpreting and fulfilling the individualistic and collective dimensions of a right to self-determination.²⁶⁷ Bodies such as ECOSOC and the Human Rights Council should focus on a continuing identification of particularities in the actual functioning of systems of rights as well as of points of similarities and complementary characteristics among these systems, paving the way to the establishment of general criteria that would help to examine the claims of states whose ability to act autonomously is undermined in face of adversities. These initiatives would then serve as inputs to the debate on international law at the General Assembly and to decisions that should be taken by the Security Council, more specifically forewarning of claims that are seen as a danger to international peace and security.

Furthermore, innovations should be envisaged in what concerns UN and states representatives' perceptions of the groundwork needed to fulfil a state's right to self-determination. Following an ethical framework, the fulfilment of this right has to be perceived as a process. It relates to a state's ability to perform ethical functions, such as the exchange of viewpoints on the foundation of international moral principles, which are necessarily continuous in time and dependent on a notion of openness to otherness. Therefore, work on the ground has to be guided by the concept of partnership between

²⁶⁷ "Strengthening of the United Nations: an agenda for change", Report of the Secretary-General, United Nations, 9/9/2002.

affected states and the international community (carried by independent observers, experts, states' representatives), in which latter treats the former as holder of a potential autonomous capacity and does its best to interact on the basis of reciprocity of treatment. This reciprocity will then help to build a sense of trust among the parties leading them to develop a dialogue about not only the best methods to secure human rights standards in the affected state but also about the terms that validate these human rights standards in general.

On the one hand, this partnership has to be conceived as a long-term strategy in which UN representatives and personnel undertake to work together with the affected state in schemes of technical support in specific areas to improve their human rights standards, such as the organisation of a representative electoral system, the discussion of methods to render Legislative procedures more effective or a Judiciary more accountable. These schemes of co-operation have nonetheless to be defined in a way that respects the affected state's need to exercise its autonomy. In this sense, UN representatives and personnel should openly interact, combining reasonableness with the exercise of moral sensibility, with state representatives and groups of civil society so as to grasp the politico-anthropological features that define the system of rights of these societies and give this system its unique character. On the other hand, this partnership has also to be conceived by UN representatives and personnel as an opportunity for them to review the historical limit of the ethical frameworks on the basis of which they formulate their activities. In this particular sense, co-operation should not merely relate to the commitment of an affected state to international human rights standards. It should also be seen as an instrument for the review current international practices and interpretations of rights.

6.5) Concluding Remarks

The principle of self-determination of states, as here understood in its individualistic and collective dimensions to individuals' moral development, is the founding principle of international society. Its actual realisation however faces obstacles

derived from the different kind of adversities states confront in the daily attempt to perform their ethical role. Though these adversities affect states differently, they are all part of an increasingly interdependent context that international society as a whole helps to construct while serving as scenario to the kind of open interactions its members need so as to become fully aware of the essential elements involved in the performance of their ethical functions. In the light of these observations, it is possible to argue for complementary principles of justice, related to international society's duties to assist and, even in extreme cases, to intervene so as to minimise the effects of these adversities.

The argument for complementary principles of justice is not however complete without thinking about the necessary mechanisms leading to the actual enforcement of the duties to assist and intervene. While these mechanisms can be said to be in their essence part of the current UN structure, they still need to be re-evaluated so as to attain more legitimacy and effectiveness. In an increasingly interdependent world, this re-evaluation has to be based on a balance between considerations about state members' power politics in the short term and the need for a more dynamic and open understanding of the interactions among these state members in the long run, aiming at a broader grasp of how different ethical viewpoints can provide insights into the formation of fit moral agents and, as a result, to the construction of a more stable international order. Following this reasoning, mechanisms should be thought of respecting states' autonomy, reciprocity of treatment among them, openness to each others' claims and the exercise of a reasonableness informed with moral sensibility.

I am perfectly aware that many critics would point to the formalism of the propositions of reform here made and the actual tendency of power politics to dominate the direction of these efforts and impose comprehensive views of the world. I should however emphasise that what has been suggested is an analysis of the possibilities for states to change their perceptions about what constitutes a regulated and safe international environment. On the one hand, I stress the normative meaning of concerted actions aiming to secure the polities' self-determination worldwide. I particularly call attention to the importance of these actions in the constitution of responsible citizens who can relate with compatriots and non-compatriots in a morally meaningful way. On the other hand, I encompass an account of the functional aspect of this proposition. It is a

proposition regarding the kind of institutional mechanism international society should actually back in order that its members can more successfully exercise the basic ethical functions that would allow them to more successfully deal with the challenges of an increasingly interdependent world.

7. CONCLUSIONS

7.1) Summary of the Argument

The critical analysis of the contemporary debate on justice undertaken in the first part of this thesis has served to identify and qualify the kind of constitutive relations between the individual and the state as well as among states that account for a functioning moral agent in an interdependent world. As I argued in chapter one, Rawls' works serve as a starting point to this investigation, first, because his earlier works ground the dichotomy of viewpoints between cosmopolitans and communitarians, which characterises this debate. By assuming individuals' universal rationality and relaxing the circumstances of justice delineated by Rawls in the OP to account for open systems of co-operation, cosmopolitans, such as Beitz and Pogge, are able to derive universally valid norms of behaviour for individuals no matter where they live. Communitarians, in their turn, reject the Rawlsian attempt to construct an OP to justify principles of justice on the basis that it wrongly focuses on procedures - an individual who exists prior to his ends. For them, justice is intrinsically constructed by values individuals share while performing social roles inside a particular political community. Second, and more importantly from the perspective of this thesis, Rawls' later works embody attempts to reconcile the challenges offered by cosmopolitans and communitarians when arguing for a politically situated notion of individuals, as citizens of liberal societies. In particular, I contend that all these attempts imply but do not fully explore the notion of a moral agent and the ethical role the state can play in individuals' moral constitution both nationally and internationally.

As I discussed in chapters two and three, cosmopolitans, communitarians and theorists of nationalism fail to offer a convincing account of moral agents who can consistently function in an environment where they are more intensely confronted with differences in cultural values, socio-economic development and legal-political

arrangements. For they portray an asymmetrical view of the constitutive relations between individuals and historically situated political communities. As a consequence, they simplify the dynamics of an international environment and its potential impact on an individual's moral realisation. On the one hand, cosmopolitans such as Beitz, Pogge and Barry neglect how the individual becomes morally motivated by the constitutive links he establishes with a situated political community through the exercise of citizenship. While deriving international just principles from a universal rationality supposedly shared by moral agents, they end up overlooking the historical limitations that shape individuals' grasp of these principles and make these principles largely identifiable as norms of conduct. On the other hand, communitarians (e.g. Walzer and MacIntyre) and nationalists (e.g. Miller and Tamir) overemphasise the constitutive role of the political community in forming a morally motivated moral agent to the detriment of an individual's impartial thinking. They undermine the construction of workable international principles of justice by allowing the states to be excessively discretionary in the definition and maintenance of a collective sense of identity amongst citizens.

In the second part of the thesis, I argued that a Neo-Hegelian perspective, as it was extensively discussed by Avineri, is in a better position to offer the set of ideas key to this reconciliation. First, it understands the formation and functioning of moral agents as the fruit of social interactions in a particular socio-historical context. As I explained in chapter four, it is as citizens participating in the definition of a system of rights that individuals develop independent critical thinking while perceiving themselves as part of a social whole, which shape their collective sense of identity and helps them to be morally motivated to act on the basis of common norms. Second, it comprehends the states as ideal constructs embedding ethical processes born out of social interactions that are realised both at national and international levels through recognition of the parties' own historically constituted autonomy.

On the basis of these two main set of ideas, I constructed my own ethical framework to account for a functioning moral agent in a challenging and diverse international environment. In chapter five, I argued that states can still be considered socially constituted necessities arranged over space and time for two main reasons. First, they still have the potential to provide for legitimate and enforceable institutional

mechanisms through which individuals can relate to each other in a specific way (reciprocity of treatment based on equal freedom) while constructing a historically situated system of rights. By performing this role, the state becomes the primary ethical locus where legitimate principles of justice are constructed. Second, the society of states can be interpreted as being not only the ethical locus where states recognise each other in their autonomous capacity to be the collective vehicle of moral self-consciousness for their citizens but also the ethical locus where their particular (historically limited) interpretations of a system of rights can be cross-examined, leading eventually to the construction of principles of justice that would be scrutinized by a progressively universal consensus.

In order that the system of states be considered such an ethical locus, its members have nonetheless to be able to relate to each other in a specific way in the actual definition of international principles of justice. The relationship has to be marked by inclusiveness in the sense that it encompasses not only states that have already reached a high level of economic and political autonomy and share a liberal understanding of ethical values but also states whose autonomy is currently being jeopardised by facing adversities and/or contest liberal ethical values. Moreover, it has to be marked by the parties' willingness to build a consensus on the basis of their continued attempt to consider each other in their potentiality to be the collective expression of a different ethical viewpoint, as embedded in their historically situated systems of rights. They have to be open to each others' viewpoint in a way that leads, on one hand, to the understanding of the distinctive characteristics of each others' systems of rights; on the other hand, it leads to the parties' ability to critically re-assess, on the basis of this broader understanding, the public policies that shape the particular content of their systems of rights and influence the construction of international norms in a context of increasing interdependence. In these exchanges, the ability of states' representatives to make use of a revitalized notion of reasonableness becomes of fundamental importance. It allows them to use a moral sensibility to explore what a historically limited (and mostly liberal) notion of reasonableness cannot convey in the dialogue they establish with each other.

The above conceptualization of states' interactions was applied to the actual formulation of just international principles. In chapter six, I particularly argued that self-determination is an entitlement that political communities not only hold against each other but also conjointly become responsible for making it effective worldwide if they are to perform their ethical roles in individuals' moral development. As a result, a principle of self-determination has to be understood together with duties of international assistance and intervention – to help less fitted states to cope with adversities that undermine the exercise of their autonomous capabilities and therefore put at risk the well-functioning of an international society. To illustrate the applicability of my ethical framework, I analyse the perceptions of the international community's members on the need for intervention and assistance in Iraq. As a consequence of this analysis, I argued that leading liberal societies need to tame their inclination to make prompt use of their overwhelming military, economic and political capabilities to contain a state's outlaw behaviour. Their ability to provide for the well-functioning of international society nowadays depends less on the use of these capabilities than on a comparative and critical appraisal of the main characteristics of systems of rights, which translate states' ethical personality and contribute to their citizens' moral constitution. This appraisal however cannot effectively be made without considering the actual formulation and enforceability of international principles, including the one related to intervention and assistance, as a necessary outcome of international consensus among members of international society enjoying diverse ethical views and levels of autonomy. In view of these observations, I finally discussed the kind of fundamental changes that should be brought to the structure of international mechanisms, such as the UN system, to make them more effective and legitimate.

7.2) Implications of the Argument

My ethical framework questions the basis on which liberalism should be the core framework to shape international practices and institutions nowadays. As I argue, in an increasingly interdependent world the universal grounding of international principles of justice (legitimacy and applicability) are to be derived from open exchanges

of ethical viewpoints among autonomous states, which are aware of their limited participation in the broader dynamics of a historical process. Present institutions and practices responsible for the functioning of international society, such as the UN and the set of international norms and directives that are formulated and interpreted by its bodies, are still strongly grounded on liberal values and ideals of their founding members. In a context featured by the growing ability of individuals, either as members of an international civil society or citizens of a state, to appeal to forms of argumentation and activities that refer to different, and sometimes opposing, understandings of moral values, the liberal outlook is being more and more questioned. Clearly these liberal views, despite being grounded in a potential universal rationality, are necessarily a product of limited historical interactions. They are partial and *per se* insufficient to ground workable international norms of conduct, which individuals can follow no matter where they live.

In this context it is not enough that liberal societies tolerate states that, though encompassing different interpretations of a good life, are yet capable of sharing a reasonableness based on a strong perception of the value of equal freedom. It does not suffice either that these liberal societies act in the sense of persuading other states, which question more profoundly the current importance attributed to these values in the constitution of a moral agent, to embrace their liberal ideals in the long run. For their claims to be regarded as legitimate, liberal societies must be prepared to openly exchange viewpoints about the different ethical perceptions that ground their particular systems of rights with societies that, though questioning liberal values, are still guided by a notion of fairness and reciprocity of treatment in their public affairs. More particularly, I suggested that liberal societies should be prepared to assume the historical particularity of their ethical perceptions and to re-evaluate these perceptions on the basis of an effort they make to grasp the singularities of others' ethical viewpoint and to consider the challenges they impose on their own.

My theoretical account of interactions among states on the basis of a historical process that demands by its own nature openness to otherness represents an attempt to make sense of the challenges facing liberalism today. Individuals and states' increasing exposure to different understandings of ethical values, such as the ones incorporated by

Islamic societies, does not represent in itself obstacles to liberal ideals. It serves as means to scrutinise the limits of these ideals in the construction of morally motivated agents, who are capable of consistently relating to each other in a more complex international environment. In this sense, I am not endorsing the viewpoint that moral values should be circumscribed to cultural boundaries and that no universal standard exists to assess an ethical proposition. Here it is an account of a functioning moral agency from the perspective of the constitutive role exercised by the political community and international interactions in a historical context where liberal ideals are perceived as preponderant and can be defended as such in terms of the conditions they make available to independent critical thinking. But it is also an account that realises that, whatever the merits of liberalism, its universal ground has to be forged in respect to a historical dynamics marked by the diversity of states' ethical viewpoints. Attempts to build a consensus through a comprehensive dialogue among states should be seen as a *sine qua non* element to the realisation of such a liberal universal ideal.

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