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RAWLS'S ENCAPSULATION OF SOCIETY

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Abstract

The aim of this paper is to examine the premise that society is a stable system of cooperation, a premise that constitutes one of the pillars of John Rawls's theory of justice. The working hypothesis is that, by resort to this premise, Rawls has committed a typical philosophical error, that of 'encapsulating' a complex, multi-dimensional phenomenon (society), into a simple, one-dimensional, essential feature (cooperation). Various possible arguments for adopting and defending this premise are analyzed, and shown to be unconvincing. It is argued that Rawls's theory fails to take properly into account essential social components like conflict and power, and that it remains thus theoretically vulnerable from this point of view.

Keywords: competition, conflict, cooperation, encapsulation, fairness, John Rawls, J.S. Mill, J.F. Stephen, just society, system of cooperation.

Rawls's theoretical strategy of *encapsulation* can be detected at several different levels and points of his constructive enterprise. *Justice as fairness* itself, his famous concern, is encapsulated in a small number of principles. But the first thing to be remarked, perhaps, is his claim that society is, or should be seen as, a 'stable system of cooperation'.² The whole complexity of society is thereby encapsulated in a single fundamental characteristic: cooperation. This is, of course, a very useful step in Rawls' enterprise: if the aim is to have justice encapsulated in *fairness* interpreted as 'fair cooperation', then it proves very convenient to have society presented as 'a system of cooperation'. Such a presentation also seems to be a good starting point: few other things can seem as unproblematic and innocent as the idea that a certain society is basically a group of people cooperating and getting benefits from their cooperation. In this paper, I shall argue that this premise is not as innocent as it seems and that the

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² John Rawls, *Political Liberalism*, New York: Columbia University Press, 1993, 15, 43, *passim*.

resulting perspective is vulnerable; this vulnerability illustrates pretty well, I think, the risks of encapsulation as a philosophical strategy.

1.

For people who are not so philosophically-minded like Rawls, it might be quite obvious that modern societies are very complex entities, the whole 'nature' of which simply cannot be encapsulated in just one kind of relations or interactions. Even if cooperation is a central aspect of all social forms of life, it clearly does not summarize the whole diverse net of human relationships.

Take, for instance, conflicts, which are, as much as cooperation, a major part of social life. Different interest groups and individuals permanently fight each other, in attempts to defeat, and sometimes even to annihilate, rivals or (what they see as) enemies, attempts which cannot be properly called 'cooperative enterprises'. Conflicts are not mere outrageous events in far-away countries; they are present, in different forms, in any country and any period of time. Modern democracy does not eliminate conflicts; it only modifies their form. The democratic system itself, as James Stephen remarked in his critique of another example of encapsulation (Mill's encapsulation of freedom), is based upon confrontation and compulsion, rather than upon cooperation: "Parliamentary government is simply a mild and disguised form of compulsion. We agree to try strength by counting heads instead of breaking heads, but the principle is exactly the same. It is not the wisest side which wins, but the one which for the time being shows its superior strength (of which no doubt wisdom is one element) by enlisting the largest amount of active sympathy in its support. The minority gives way not because it is convinced that it is wrong, but because it is convinced that it is a minority".³

These are not the subversive suggestions of some Nietzschean or some Marxist writer: Stephen was just a pragmatic conservative, endowed with lucidity. He simply could not forget the obvious fact that social life is the field of permanent fight between opposing interests, ways of seeing and priorities, and that "struggles in different shapes are inseparable from life".⁴

Given the omnipresence of social conflict in real life, some authors (Marx, most notably) have even considered it legitimate to encapsulate 'the essence of society' in (class) struggle: "the history of society is the history of class struggles", claimed a famous slogan. Encapsulating the whole diversity of social relationships in one single element (social conflict), is, of course, a strategy which obscures other, equally or even more, important, kinds of human

³ James Fitzjames Stephen, *Liberty, Equality, Fraternity*, London: Elder & Co., 1874, 30.

⁴ *Ibidem*, 180.

relationship and plays a major role in justifying political violence. If struggle is all that social history is about, why wouldn't we go on fighting until (our) idea of social justice would materialize?

To be sure, Rawls' encapsulation of social life in cooperation goes in the opposite direction, exalting cooperation, not conflict, but it instantiates the same kind of reductive intellectual strategy and provides an equally truncated view of society. Hearing him speaking about "political cooperation on the basis of mutual respect",⁵ it would be difficult to imagine that political life includes also other things than elegant cooperative initiatives. But common sense suggests that, given the permanence of both cooperation and conflict in social life, it is more appropriate to speak about society as 'a system of cooperation and conflict', than as a (pure) 'system of cooperation'.

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Now, it might seem that such an objection is based upon a misunderstanding (Rawls' favorite complaint is that he is the victim of some misunderstandings). It could be said that what we face here is the following dilemma: either social conflicts are solved cooperatively, and in that case they are nothing more than special kinds of cooperative interactions (to be compared with sportive games, in which rivals fight in a cooperative way); or they are solved by sheer violence, and in that case they cannot be the proper object of a theory of justice like Rawls' theory (as confrontation based on ruthless use of force, a conflict cannot have anything to do with 'justice' or 'fairness'). If, then, this dilemma was accepted, it would appear that there is nothing wrong with Rawls' presentation of society as a 'system of cooperation': his theory seems to take into account all elements that a theory of justice should take, being, in this sense, complete and unobjectionable.

But this impression is false, and I shall try to show that by making three points.

The first point is that one cannot defend the idea of 'justice as fair cooperation' (which Rawls actually wants to defend) by proclaiming that the problem of justice can be meaningfully raised only where we have to do with some kind of cooperation: such a defense would be viciously circular. If 'justice' refers exclusively to cooperation, then of course 'just' means 'just cooperation'. But then an essential part of the strategy is circular: justice can be encapsulated in 'fair cooperation' simply because one has decided to restrict the application of the term 'justice' to cooperative interactions. And such a strategy is vulnerable to the obvious objection that the normal use of the term 'justice' goes much further beyond the field of cooperative interactions. We normally talk, for instance, of 'just' and 'unjust' wars; and one could call even a certain civil war 'just' (when, for example, those who have started it fight against

⁵ John Rawls, *op. cit.*, 156.

dictatorship, illegitimate discrimination, political arbitrariness etc.). From an usual, non-theoretical point of view, such a 'just civil war', although not an example of 'cooperative interaction', is extremely relevant for the problem of social justice: it is, actually, a piece of social justice in the making, one could say. Unfortunately, from a theoretical point of view of the kind alluded to above, i.e. from Rawls's particular theoretical angle as it appears in this possible reconstruction, one couldn't call a war 'just', because it was not a piece of cooperative interaction. Here we are, of course, tempted to say that there must be something wrong with the theory, as long as it prohibits certain uses of the word that we consider normal and correct. And the above is not the only relevant example in this sense. What about coercion and (political) repression? We need a theory of justice which allows us to say that certain kinds of coercion and repression are 'just' (for instance, repression of terrorist groups, of extremist violent groups, etc.), while other kinds are 'unjust' (for instance, repression of legal political movements, or of human rights activists). Under this interpretation, Rawls's theory won't allow this, because it encapsulated justice in 'fair cooperation' and coercion or repression cannot be taken as an example of cooperation.

Now, even if there is no dispute concerning the facts mentioned above, their relevance can still be challenged. Some of the examples I have given above might still seem irrelevant, inasmuch they are characteristic for an *unjust* society. Civil war, political (abusive) repression etc. could be seen as empirical facts which (although pretty widespread in the world) cannot be relevant to the ideal of a just liberal society of the kind Rawls refers to. Once again, one could suspect that the present critique is aiming at the wrong target. I therefore think that some insistence is still needed upon the fact that at least coercion, and even repression (which is a kind of non-cooperative interaction between some institutions and some groups or associations which are repressed) are not necessarily blamable activities, characteristic for states in which justice is not achieved. They are not only the consequence and counterpart of injustice, but also a constituent of justice: some kinds of coercion and repression are not *contingent*, but rather *constitutive* for any (just) state. As soon as one abandons the idyllic view of social relationships as simply 'cooperative', one remembers that society is not only the admirable field of *participation* but also the bleak field of *parasitism*; not only a place where honest people help each other, but also one where profiteers take advantage of other people, of social arrangements or of institutions. In any society, there are (and, presumably, there will always be) participants who behave as 'free riders', or who take advantage of some 'gaps in the law', or whose 'participation' consists in activities 'close to the law', or who actually break laws in order to get some kind of profit out of that. Coercion and repression, applied to such participants in the social game (and political extremists as well), are not a contingent, irrelevant task to be faced

only in some unjust societies: it is rather a main task of any just society. A just society is not simply a society based upon just principles, which provides fair treatment to friendly, cooperative, people; it is rather one based upon just principles and which enforces those principles (repressing people who are not so nice and cooperative, imposing some particular arrangements considered to be just). Justice involves not only just principles and just 'rules of the game'; it also involves their just application. For, obviously, we would not normally call 'just' a society which, although based, in principle, upon splendidly 'fair' arrangements, would not be able to enforce them. Thus, justice must include at least one self-referential principle: the principle that the just principles must be justly applied; one of the basic 'rules of the game' should be that which requires the just enforcement of the 'rules of the game'. And this leads us to the idea of 'just' coercion and repression: people who break the 'rules of the game' must be repressed in order that justice be attained. This is an aspect of justice which cannot be adequately dealt with in Rawls' theory, because repression is not a 'cooperative' interaction. His theory has thus built-in limits of application because it is based upon a narrow interpretation of society.

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The second point is that the above dilemma is suspect, because in real life you simply cannot divide social conflicts in just two categories, 'cooperatively solved' and 'non-cooperatively solved' ones. Human interactions in a given (modern) society are numerous and varied, and in most relevant cases of conflict one has to do with both cooperative and non-cooperative ingredients: i.e., in such cases one can detect both the use (or at least the invocation) of rules, principles, 'shared meanings' or norms, and the attempt to win by putting pressure upon rivals, enemies, institutions or the general public. Accordingly, there are many kinds of solutions to conflicts, with different degrees in which 'the rules of the game' are applied and with different degrees in which force (of various kinds) is used; in most cases, one does not find purely cooperative or purely non-cooperative solutions, but rather solutions resulting from different mixtures of rule-application and pressure-exerting: the way in which most conflicts end is determined by both (commonly agreed) regulations and the balance of power (between participants).

There is also another argument against dividing interactions in 'cooperative' and 'non-cooperative'. This dichotomy suggests that social interactions are either cooperative, thus 'legal' and relevant for a theory of justice, or non-cooperative, thus simply 'illegal' and therefore irrelevant for a theory of justice. This suggestion is, I think, mistaken. The whole framework of the argument mentioned above is simplistic and incomplete. The right interpretation of conflicts should take into account not a dichotomy, but rather a trichotomy of situations. For in fact we have to deal with three different cases:

(i) conflicts that take place inside the legal framework or in a space ‘covered’ by some ‘rules of the game’, and such conflicts can perhaps (although there are some doubts) be considered as special kinds of cooperative interactions; or, (ii) conflicts that develop violently outside any legal or normative framework, and which, perhaps, could be dismissed as irrelevant for a theory of justice; but also (iii) conflicts that evolve in contexts in which no relevant, complete, legal or normative framework exists, in spaces not covered by the ‘rules of the game’, or in which the existing rules can be interpreted in different, mutually incompatible, ways. The possibility of this third case arises because no system of rules, norms or laws is ever complete, crystal-clear and sufficient for the exhaustive, unambiguous, regulation of a certain social field: there always are and, as far as we can see, will be, ‘gaps in the law’, enclaves of unregulated (or at least incompletely regulated) behavior, rules that can be interpreted differently, ambiguities as to what the ‘spirit of the laws’ requires and as to what is ‘in accord with the given rules’, as to how principles should be applied etc. There can be no perfect algorithm for applying the principles, the rules or the law. This is evident in new cases, in which how the rules should be extended becomes a matter of dispute, but it is also true in familiar cases, because it is often disputable how ‘familiar’ a case is (i.e., how similar to the old ones, and to what extent different from them). There will always be enclaves of disputable decisions and debatable choices; the clash of interpretations will never vanish, a perfect algorithmic order, based on unanimously-agreed solutions, is not a realistic aim. Such ‘enclaves of disorder’ do constitute the favorite place for political and social disputes or even conflicts, because here the opposing groups can take advantage of the existing ‘gaps’ and promote their interests ruthlessly, even to the point of annihilating rivals, without, strictly speaking, breaking an existing law or offending a well-established, explicitly stated, notion of justice. When conflicts of the third type are finally solved by some sort of compromise, or by creating new rules, they can still appear as special kinds of cooperative interaction. But they are often solved in non-cooperative ways: the stronger group, or the relevant majority, simply imposes its will and dictates the solution it prefers. As solved through ‘the dictate of the stronger’, interactions of this kind cannot be simply dismissed as irrelevant to a theory about social interaction: on one hand, they are not, alas, untypical to modern social life, and, on the other hand, they cannot be left aside as mere factual contingencies. They are neither mere accidents, nor mere examples of deviation from what is right (from what justice requires): since they arise in (and take advantage of) an unregulated space, or at least, an insufficiently regulated one, they cannot be labeled ‘illegal’, ‘unlawful’, or simply ‘unjust’ (‘contrary to what justice requires’) and, to that extent, ‘irrelevant’ to a theory of justice. Such labels can be applied only where an unbiased algorithm is available, by which one could arbitrate between competing interpretations and rival groups; but in the cases I

am talking about, this is precisely what is lacking, so that all the competing claims or interpretations must be accepted as legitimate and relevant, and taken seriously into account as normal components of the net of social relationships.

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The third point is the following: the impression that social interactions could (unproblematically) be divided into cooperative and non-cooperative ones is based upon a confusion between real, deep, 'conflicts' and mere 'collisions' or local 'battles'. Although it is of course true that in modern societies some particular collisions of interests can be solved by applying well-established rules (constitutional principles, laws, regulations, norms etc.) in well-crystallized frameworks (such as courts, tribunals, parliamentary elections etc.), it would be deeply wrong to claim that, in general, conflictual interactions are, or can be, solved in this manner. In fact, most serious conflicts between individuals and groups are not solved in such pre-determined ways, through mere application of some (legal or electoral) algorithm; they continue for considerable periods of time, during which the participants go on fighting in various ways: by propaganda, social activism (public demonstrations, mass meetings, protest marches), political pressure, lobbying, strikes and others means (including some 'non-orthodox' ones). Only some particular 'battles' (which take place in courts, tribunals, parliaments or other institutional frameworks) can be, to some extent, compared with a competition in which the final result is clearly deduced by using a normative algorithm: that is why we can speak of 'the winner' in a trial or in some parliamentary elections, as we speak of the winner of a race. But significant social conflicts are not solved in this manner. There is no algorithm for deciding 'the winner' in conflicts between some ethnic minority and the majority or the government, between trade-unions and firms or companies, between well-established interest groups and so on. Some particular collisions (on a well-determined topic in dispute) can be settled in court or in some electoral process, but the struggle does not end here: its final result does not come as a solution of some (judicial or electoral) algorithm, but rather as the last stage in a long process of confrontation between the groups involved. These groups can, of course, be considered engaged in some cooperation, to the extent that they still obey some rules and do not wage a 'total war' (i.e., do not engage in civil war). But this is not to say that their interaction can be summarized as 'cooperative': for, in fact, they do not simply 'compete' for a leading position in a certain predetermined kind of 'game', but rather fight for their survival (as social or political forces and as interest groups). It seems hardly appropriate to consider such interactions as 'cooperative' ones, because in such cases different interest groups engage in merciless struggle, try to impose their own aims or preferences, put immense pressure upon others and aim at domination, instead of cooperating and seeking

acceptable compromise. Such interactions are conflictual, rather than cooperative, and they are sometimes conducive to devastating social conflicts – and, since they are characteristic to modern societies (at least as much as the ‘cooperative relationships’), they must be admitted as proper parts of social life.

If they are, Rawls’ notion of society as a ‘system of cooperation’ must be modified, and its ‘reductive’ character acknowledged: the ‘essence’ of society cannot be encapsulated in the ‘system of cooperative relationships’. By presenting society exclusively in terms of ‘cooperation’, Rawls provides an unnecessarily idyllic framework for his theory of justice. Whatever its merits, his construction suggests that *social justice* can be summarized in a few principles or encapsulated in some general explicit rules concerning ‘fair cooperation’. This encourages the hope that *all that is important, from the point of view of our aspirations towards social justice, can be captured by some explicit principles governing cooperation*, principles of the kind Rawls has proposed. But, if one admits that conflictual interaction is an essential component of social life, and moreover that conflicts can take place in spaces for which no unanimously-agreed regulation exists, one realizes that we really need not only principles of ‘fair social cooperation’, but also ‘principles of fair conduct in social conflicts’ and of ‘fair solving’ of such conflicts. That is, our idea of justice cannot be reduced to an idea of ‘fair cooperation’: it should also include at least ideas of ‘just social conflict’, ‘just civil war’, ‘just coercion’ and ‘just repression’.

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“So long as we live, there can be no escape from the struggle for power” (BRUCE ACKERMAN)

One basic element missing from Rawls’ picture of society is *power*. Although in most cases the problem of power is raised in connection with the state or with different institutions, it is obvious that the issue of power is inseparable from every aspect of society. It is not necessary to adopt a Nietzschean view of human life, in order to see that: both historic experience and present acquaintance with social issues prove that individuals, associations and groups systematically try to acquire, to exert and to use power in their attempts to reach their ends. People like Orwell insist that power is not just a means, but rather the end of social efforts; but we don’t need to agree with them: even as a (mere) means, power and the attempt to accumulate it are always present in society. Even if we confine our approach to power in this way, by taking it as an indispensable instrument, it still remains true that, in a sense, “power in whatever form is the essential thing”.⁶ If nothing can be achieved

⁶ James Fitzjames Stephen, *op. cit.*, 31.

without power, then of course power is the, or at least, a main component of the 'social game'. Now, is this indisputable fact compatible with the view of society as a 'system of cooperation'? Rawls would probably answer affirmatively, by claiming that in a 'just society' power is inoffensive, since it is always subordinated to cooperation: power is simply the means by which cooperation is achieved, protected, improved etc. Such a view of human beings as purely 'cooperative agents', and of society as a field where everything is subordinated to cooperation is obviously illusory. But not this is the main argument; the essential objection to such a view is that it presupposes a possibility to differentiate systematically between kinds of use of power, degrees in which power is used, the real aims of exerting power etc. The truth is that, although in many cases it is evident how power is used, to what aim, and in what degree, in innumerable many cases we are not able to determine exactly these aspects: it is very often the case that we do not know exactly if, when and to what extent should power be exerted; we cannot appreciate whether in some particular contexts the use of power is or was justified, whether the degree in which it is, or was, applied is the exact degree needed in order to improve 'cooperation'; and we cannot be sure whether the final, and real, aim of using power is/was a positive, 'cooperative' one. The complexity of social situations is such, that sometimes even those who exert power cannot determine exactly these vital elements. When fighting for power, a political party, or a group of people, are in general convinced by both the fact that their program would improve 'social cooperation' and the fact that their being in power is good *per se*; it is hard, even for them, to disentangle these two aspects of their aspiring to power, and consequently it is often impossible to say if and how power is used as a means or as an aim in itself. There can be cases in which the difference is obvious, but in general it certainly is not. Claiming that it is possible to distinguish systematically between 'power subordinated to cooperation' and 'power for its own sake' seems to be as naive as claiming that it is possible to distinguish systematically between 'things desired because they are valuable' and 'things desired because we are fond of them'; the trouble is that in most cases both are true, 'things are valuable and we are fond of them', and, in a similar way, power is valuable (as a means to promote cooperation) and we are fond of it (as power *per se*): in such cases, the two functions cannot be disentangled.

Thus, if the two functions of power are in general inseparable, it is useless to propose a principle of justice based upon such an unlikely separation: claiming that in a 'just society' power should always be subordinated to cooperation is similar to claiming that in a 'rational world' people should only be fond of valuable things - as one cannot in general distinguish between the two alternatives, the requirement is inadequate, and it once more suggests a certain kind of idyllic vision of society.

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To the objection that Rawls' framework is unnecessarily idyllic, there is a possible reply based on the distinction Normative vs. Descriptive.⁷

Rawls can, of course, claim that his theory is not a description of social life, but rather a theory about justice, so that he cannot be reasonably expected to account for all 'non-cooperative' components of modern societies.

This, I am afraid, is not a convincing reply. Even if the aim is not descriptive, but normative, the whole construction cannot be done without some interpretation of social life, its 'nature' or its characteristics. The validity of the final (normative) conclusions will depend upon the correctness of this interpretation: if it leaves out important, significant, elements of society, the conclusions will be poor and unsatisfactory. So the question remains whether all elements relevant for our idea of social justice are captured by an interpretation of social life as 'cooperative interaction'. They are not, I submit.

Some of the social conflicts which are obscured by Rawls' understanding of society as a 'system of cooperation' are not mere matters of empirical fact, irrelevant for a conception of justice. On the contrary, they are directly connected with social disputes about justice and fairness: as long as different groups and individuals fight each other in the name of different ideals of social justice, ideals which, in some extreme cases, justify even a destruction of the whole political system, the conflictual aspect of social life seems acutely relevant for any theory of justice.

Rawlsians would perhaps point out that precisely the lack of an ideal of justice is the source of conflicts, and that, consequently, Rawls should not be expected to accept an in-built element of social conflict in a theory which provides precisely that political 'middle ground' meant to avoid such conflicts. As long as his theory is 'representing' a kind of just social arrangement, why would it be compelled to take into account the real conflicts resulting from the absence of such a fair arrangement?

The presupposition of such a way of reasoning is that one can use the abstractions one pleases, provided that they are adapted to one's final aim; and especially when one's aim is normative, not descriptive, one is entitled to ignore any empirical fact one prefers to. This position is hardly acceptable, for the abstractions one uses (no matter to what aim) are not innocent at all. For instance, by starting with abstractions like "society is a fraternity of equal beings", one can easily construct a completely equalitarian ideal of justice, and then use this ideal in order to justify the initial abstractions: when told that human relationships are not exactly 'fraternal' and that men are not equal from

⁷ For instance, in his *John Rawls zur Einführung*, Hamburg: Junius Verlag, 1993, 195, Wolfgang Kersting affirms that the Communitarian critics of Rawls make a confusion between the descriptive level of social anthropology and the normative level.

every relevant point of view, one could easily reply that such contingent aspects do not matter, since the intention was not to describe empirical forms of life, but to build up an ideal of justice. Define society as a 'big family' the members of which are 'brothers' or at least 'cousins', and you can then easily reach the equalitarian conclusion that the whole 'heritage' of the family should be divided equally among all; follow Hobbes in defining society as a battle field between self-centered individuals and you will reach different conclusions about what is right; and, in every case, you can dismiss objections based upon empirical facts as irrelevant to normative issues.

In short, what I am trying to say is that the abstractions used in order to construct a theory of justice are not without (long-lasting) effect, they are not harmless: simplified or inadequate ideas about society are prone to lead to simplified or inadequate ideals of social justice. In Rawls's case, the premise that society is a system of cooperation encourages the encapsulation of social justice in some principles of fair cooperation. If society is nothing else than cooperation, what else than 'fair cooperation' could *social justice* be?

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"A modern society can be seen under different, mutually irreducible perspectives" (CHARLES TAYLOR)

Now, what it should be stressed here is, I think, that society is not one thing; it is rather many different, and interconnected, things at the same time. It is, indeed, a system of cooperation; but it is also a domain of competition and conflict, a field where different forces fight each other etc. It is a network of relationships between individuals who have rights and want to be as free as possible; but it is also a network of relationships between individuals who have duties, responsibilities, tasks and which must accept some constraints (although they often tend to avoid them). Society is a domain of peaceful coexistence between (some) persons with different aims and preferences, as Rawls always insists ; but is also a place of compulsion and even organized repression, and where many people try to dominate (economically, politically, or ideologically) instead of coexisting friendly with all the others.

And to the simple truth that society is many different things, one must add a second (equally) simple truth: we normally do look at society in many different ways. Sometimes, we look at it as a system of cooperation and then we might be interested in 'fair cooperation', as Rawls insists. But some other times we look at it as a system of conflicts between individuals and groups, between different kinds of interests and priorities, etc.; in such a case, we might need a sensibly different idea of justice than that encapsulated in 'fair cooperation'. Suppose we engaged in such an analysis of society. One of the conclusions

would probably be that the present arrangements (concerning distribution and redistribution) are the final result of a long series of confrontations which took place (in a democratic manner, say) between different interest groups. One possible proposal would then be to leave them as they are, and wait for new outcomes of future similar confrontations; i.e., instead of believing, like Rawls, that “the content of justice must be discovered by reason”,⁸ one could sincerely believe in spontaneity, and expect that the best solutions to the problem of social justice would result from free democratic confrontations between the relevant groups. Others could object to such a passive attitude, claiming that some interest groups are disadvantaged, by not possessing proportional means of promoting their (justified) interests, and, consequently, that no ‘spontaneous’ arrangement can be ‘fair’. The solution, in this case, would perhaps be that of trying to promote justice by creating ‘fair’ conditions of fight for social justice: creating a certain ‘equality of opportunity’ for all the relevant groups, in their efforts to promote their legitimate interests; increasing the possibility of direct expression, for all the groups involved (by using referendum as a means of democratic ‘competition’ between various preferences, for instance) and so on.

When we are interested in maximizing individual freedom (as we often are), we would probably agree with Rawls’ encapsulated notion of justice, simply because we do have in it (in the first principle, more precisely) the arrangement we need or, at least, the best we can imagine. But when interested in duties being fulfilled and in responsibilities being assumed, which is also something important for us (and vital in any just society), we would probably have to ask for something else than Rawls’s recipe, which does not offer very much in this respect. We would also need a different idea of justice when making judgments upon the quality and quantity of compulsion or repression needed in certain cases, for the principles of ‘fair cooperation’ cannot be of much help here, and so on.

Thus, a more realistic look into the matter indicates that what people expect from *social justice* is much more complex than any Rawlsian set of principles for fair cooperation: we don’t think about society exclusively in terms of ‘cooperative arrangements’, we think about it from several different points of view, and therefore we generally expect from social justice more than Rawls’ construction can promise: we expect fairness not only in cooperation, but also in conflictual relationships, and it is very unlikely that this kind of fairness can be reduced to fairness in cooperation. We expect social justice to include also arrangements implying the fulfillment of duties and the adequate assuming of responsibilities. Again, it is very unlikely that fairness as accomplishment of everyone’s duties can be derived from Rawls’ principles, given the notorious “limited scope of obligation on the liberal view” (as Michael Sandel puts it).

⁸ John Rawls, *op. cit.*, 274.

We are therefore led to the conclusion that encapsulating society in 'fair cooperation' is not a satisfactory start for the theory of justice. But, in the theoretical framework proposed by John Rawls, this particular encapsulation is not isolated; actually, it is connected with several other (very similar) abstractions. Take, for instance, his view of institutions: "Society's main institutions, and their accepted forms of interpretation, are seen as a fund of implicitly shared ideas and principles".⁹ A critique (similar to that made above) can be made against this principle too. It is quite true that we sometimes see an institution as a crystallization of some shared principles, but it is equally true that some other times we see it differently: as a set of roles and hierarchical positions which can be, but which are not necessarily, agreed upon, or as the result of some historical evolution of a previous institution, a result which many people would like to change but have not yet been able to, etc. Thus, we are normally not inclined to encapsulate an institution in a 'fund of implicitly shared ideas and principles'. For Rawls, though, this is a quite natural step: after reducing society to a 'system of cooperation', he has, of course, to reduce institutions to funds of 'shared principles' of cooperation. Things make sense, then; but the general image is an oversimplified one.

2.

In the first part of this paper I have tried to argue that the picture of society as a 'system of cooperation' is not a complete and sufficient one. In the remaining part I shall try to question even the partial adequacy of this picture: supposing that Rawls' picture is not complete, is it at least *partially* adequate?

I think that the answer depends on the interpretation given to the term 'cooperation': under certain interpretations, saying that 'society is a system of cooperation' is not adequate at all, not even as a partial image.

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The New Shorter Oxford English Dictionary (the 1993 edition) tells us that 'to cooperate' means 'to work together' (for the same purpose, in the same task), 'to act jointly', or 'to combine' (in order to share benefits). The *Longman Dictionary of The English Language* (the 1993 edition) equates 'to cooperate' with 'to act or work with another/others for a common purpose', 'to act together', 'to associate with another/others for mutual benefit'; 'cooperation' means 'interaction with common benefits'.

In these explanations, there are several suggestions which should discourage any attempt of presenting society as a 'system of cooperation'.

⁹ *Ibidem*, 14.

First of all, the suggestion of a common purpose or task (characterizing all participants in cooperative interactions) is obviously opposed both to our intuitions about social reality and to Rawls' aims: we do not think that all the members of a modern society do share a unique common purpose and, of course, what Rawls wanted to do was precisely to provide a theory of justice for people among whom there is no such consensus either on values or on ends. Thus, if cooperation actually implies a common purpose or a common task, then modern social life is not an example of cooperation.

Secondly, the suggestion of a certain 'togetherness' (which appears almost everywhere in these explanations of the term) should make us very suspicious. Given the dimensions of modern societies and their complexity, given the 'indirect', mediated, nature of most of the social interactions, the characteristic feeling (for their members) does not seem to be the 'sense of togetherness' but rather a certain 'sense of immersion': people feel that they are somehow 'immersed' in a huge social recipient, or integrated in immense nets of relationships, the features of which they are seldom and only to a minuscule extent able to influence. 'Togetherness' has of course been an element insistently emphasized by liberal, contractarian thinking, but to contemporary ears the word sounds more like a nice metaphor inherited from old, Enlightenment, times than as a realistic designator of social realities. Contemporary citizens tend to consider themselves 'enclosed in a huge social machinery' rather than as simply 'working together'.

Thirdly, there is also a certain suggestion of 'free-willingness' which does not seem appropriate for modern social life. The element of 'working together' implied by the above explanations seems to suggest that social cooperation has been freely chosen by participants, who, therefore, are somehow responsible for the way in which they cooperate and for the arrangements governing their cooperation. Nothing could be more implausible than such an implication. Even if we do cooperate, the cooperation in which we engage is not devised, adopted or freely chosen by us, and we are to a very small extent responsible for the arrangements which constitute the framework of our cooperative interactions. The cooperation we engage in and its basic arrangements are the final result of a long chain of historic events, and we seldom feel responsible for this result; we perceive those arrangements as constraints which we have to accept rather than as something we are asked to agree upon. Our cooperative arrangements are the effect of history, of a long series of past events, not of our immediate cooperative efforts, and from this point of view it could be said that our characteristic forms of life *compel us to cooperate*, rather than being the result of our intentions to cooperate. Consequently, cooperative interactions are at best a part of the social life, but they are far from being *what social life is about*. Happily so, indeed, for were social life governed by the sheer logic of cooperation, then it would have been

extremely poor: a lot of cultural activities, for instance, which are not of obvious, immediate and instrumental benefit for many people, would have appeared as dispensable and it would have been hopelessly difficult to convince most of the taxpayers to 'cooperate' in order that those activities and the corresponding institutions be supported. What helps such activities and institutions to survive is precisely the fact that modern social life is not governed by the simple logic of cooperation: they are supported because they are considered *valuable per se*, in a certain form of (civilized) life, not because they contribute directly to some forms of cooperation.

Now, what the conclusion of such remarks should be? It should not be, of course, simply that there is no such thing as social cooperation. Rather, we should probably say that there is a cooperative aspect of social interactions which is hard to deny, but which is also insufficient, taken in itself, for a correct characterization of modern social life. To deny the reality of cooperation would certainly be absurd; but to present 'society' as being (basically) 'a system of cooperation' is misleading. Such a presentation provides a very one-sided view of social interactions and obscures essential features of social life.

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ATTRIBUTIONS OF MORAL RESPONSIBILITY: FROM ARISTOTLE TO CORPORATIONS

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Abstract

With the growing interest towards moral issues within corporate settings, attributions of moral responsibility are extending from individual agents to collective agents such as corporations. But are the latter capable of satisfying the necessary and sufficient conditions for moral responsibility ascriptions traditionally defined in the Aristotelian framework? This article discusses the topic of moral responsibility as related to both individual and collective agents, inquiring whether corporations are able to bear moral responsibility as individual agents do. It advances an interpretation in which, based on the status of secondary moral agents and on internal structuring mechanisms such as corporate practices, corporations are able to meet the criteria for moral responsibility ascriptions.

Keywords: moral responsibility, corporate moral responsibility, individual moral responsibility, business ethics.

Both academic research and media discourse of the past decade suggest a growing interest towards corporate morality, with subjects such as corporate accountability, responsible business practices or organizational integrity being often under debate. In this context, the topic of *moral responsibility* becomes relevant not only related to individual human agents (as it traditionally used to do), but also to collective agents such as corporations. But while our everyday language practice seems to have created room for such moral projections made on corporations, scholarly philosophical research has not (yet) reached a final agreement on the general topic of collective moral responsibility, more particularly on corporate moral responsibility. And even though there may be some agreement on the limits and boundaries of individual moral responsibility, current research is still inquiring whether we are justified in speaking about the moral responsibility of corporations (Phillips 1995; Velasquez 2003). To that end, various interpretations are put forward in depicting the possible criteria leading to legitimate ascriptions of moral responsibility to collectives such as corporations.

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This article discusses the topic of moral responsibility² as related to both individual and collective agents, inquiring whether corporations are able to bear moral responsibility as individual agents do. What are the criteria that we use when we speak about moral responsibility? How do we ascribe moral responsibility to individual human agents? Most importantly, can our criteria of moral responsibility as related to individuals be extended to collective agents such as corporations? These are the main questions to which this article is trying to find an answer.

I start by discussing individual moral responsibility, where I first delineate the necessary and sufficient conditions put forward by Aristotle in the *Nicomachean Ethics (NE)* as related to situations when we ascribe blame or praise to an agent, for these conditions are traditionally equaled to moral responsibility (Meyer 1993). After outlining current scholarly research on moral responsibility ascriptions which partly reiterate the Aristotelian framework, I then suggest a possible interpretation which brings the Aristotelian set of necessary and sufficient conditions for moral responsibility closer to our current perspectives on the topic. I continue with discussing corporate moral responsibility, where I briefly sketch the individualist-collectivist debate over collective moral agency. I finally discuss how we can enlarge our individualist conception on moral responsibility so as to create room for corporate morality, and end the paper with several conclusions.

I. Individual Moral Responsibility

As moral responsibility ascriptions concern first and foremost individual agents, I begin by discussing what it means for an individual to bear moral responsibility for a particular action. In the Aristotelian tradition, this generally amounts to specifying the set of necessary and sufficient conditions under which an agent may be adequately ascribed praise or blame for his actions in a given context. After discussing the analysis advanced by Aristotle in his *Nicomachean Ethics*, I go on and take a close look into its implications for current scholarly research on individual moral responsibility.

² I am only interested here in moral responsibility from a retrospective or backward-looking perspective (Gilbert 2006; de Leede, Nijhof and Fisscher 1999), that is, moral responsibility ascriptions for past actions (embedding a causal meaning), as opposed to prospective or forward-looking moral responsibility (Idem), which is rather concerned with taking on responsibility for future states of affairs (as it rests on a deontic framing (Velasquez 2003) of responsibility).

1.1. The Aristotelian Framework

Aristotle does not use a specific term or concept in order to speak about what we call today as *moral responsibility*. Nonetheless, his analysis from the *Nicomachean Ethics*³ – especially Book III parts 1-5 and Book V parts 8-9 – concerning the pair “voluntary-involuntary” and “deliberation” appears in the context of discussing virtues and vices. More precisely, the analysis is concerned with discussing the conditions under which it is adequate to blame or praise someone for his character dispositions or for his actions (*NE*, 1109b, 30). As such, the inquiry on these conditions is equivalent to analyzing the *conditions under which an agent is ascribed moral responsibility for his actions*⁴.

What I will be advancing here is a stronger claim (Mureşan 2007), for which there is enough textual support in the *Nicomachean Ethics*: that, in order to ascribe moral responsibility to an agent, it is necessary not only to consider that his action was performed voluntary, but also that his *voluntary action* was based on a *deliberate decision*⁵.

1.1.1. Voluntary vs. Involuntary Action⁶

In order to delineate the sphere of voluntary action, which I will finally restrict so as to define the sphere of moral responsibility of an agent, I start by discussing Aristotle’s analysis concerning voluntary vs. involuntary actions, where I focus on those aspects which are particularly important for the final discussion concerning the conditions for ascribing moral responsibility to an agent.

³ All references to the *Nicomachean Ethics* refer to Irwin’s (1985) translation.

⁴ Many interpretations seem to share the opinion that the analysis of voluntary actions from *NE* is equivalent to specifying the conditions for moral responsibility, based on the fact that Aristotle holds that it is first necessary that the action of an agent is voluntary in order to blame or praise that agent (Glover 1970).

⁵ Contrary, for instance, to the interpretation advanced by Broadie (1991), namely that the notion of “responsible agent” does not have a more limited extension than “voluntary agent”.

⁶ I will only partly use here the terminology proposed by Irwin concerning the voluntary and involuntary action. In the *Nicomachean Ethics*, Aristotle uses the Greek pairs “hekusion/ akousion” with reference to actions and “hekon”/ “akon” with reference to persons (Hughes 2001; Meyer 1993), terms which have been widely translated with “voluntary”/ “involuntary” (Broadie 1991; Bostock 2000; Ross 1980; Irwin 1985), “intended”/ “unintended” (Urmson 1994) or “willingly”/ “unwillingly” (Irwin 1985; Hughes 2001). In addition to this, Aristotle uses different terms to describe, on the one hand, the action as performed at the time the agent acts and, on the other hand, the action in the light of the agent’s subsequent reaction to what happened, when he regrets the action (Hughes 2001). Throughout this article I will use “involuntary” to refer to the former and “not voluntary” to refer to the latter (denoting actions which are not only without the intention of the agent, but actually *against* his intention). Irwin (1985) uses instead “non-voluntary” vs. “involuntary action”, while Broadie (1991) speaks of “nonvoluntary” and “countervoluntary” action.

Involuntary actions: “by force” or “because of ignorance”. Aristotle identifies two situations in which an agent does not voluntarily perform an action (in other words, he acts involuntary): (a) when he acts “by force” (Gr. <*bia*>); (b) when he acts “because of ignorance”. In the former case, the agent acts through an external irresistible force (1110a; 1110b, 5): the origin or cause of his action is *external* to the agent, so that the agent does not actually contribute to realizing that specific action (for instance, when the agent is on a ship carried out on sea by the wind, without him being able to do anything to determine the course of the ship). In the latter case, the agent acts “because of ignorance” (1110b, 20), without knowing the particular circumstances in which he acts and without being able to anticipate the result of his action. In this case, the agent acts without intention, involuntary, because he does not know the *particular circumstances* of his action (concerning the agent, act, object of action, instrument, aim or purpose, manner).

A particular situation in this latter case is that in which, according to Aristotle, the agent *regrets his action*, has a feeling of remorse when finding out the consequences of his actions – which further indicates that he would not have acted in the way he did if he knew the specific circumstances of the situation in which he acted (for instance, the agent gives someone to drink a liquid in order to save his life and instead determines his death). As Aristotle puts it, this particular situation is the only one in which the agent acted against his will/intentions, namely, **not voluntary** (1111a, 20) and deserves, accordingly, “pity” and “forgiveness”.

Furthermore, Aristotle identifies a second category of actions performed “because of ignorance”, namely the case in which the agent acts “**in ignorance**” (1110b, 25), as in cases when in he is not aware of his acting (the case of the drunk man or the angry man). This is, apparently, another case of involuntary actions. But this is only apparently, because unlike actions performed “because of ignorance”, where we can remove the blame normally put on an agent as long as he regrets his action (when acting “not voluntary”), such actions necessarily determine our blaming the agent, as the agent allowed himself to reach such a state of ignorance caused by his own vices. The agent is therefore completely responsible for his action because this is the consequence of an initial action which was voluntary, deliberate (for instance, the man who acted blameworthy, “in ignorance”, when he is drunk will be considered blameworthy because he deliberately started to drink in the first place).

Mixed actions. In the *Nicomachean Ethics* (1110a, 10), Aristotle analyses an additional situation, one in which it is difficult to determine if the agent acted voluntary or not, in other words if the agent meets the criteria to be ascribed blame or praise. It is the case of *mixed actions*, a category Aristotle uses to define those situations in which the agent acts “under compulsion”

(gr. <*ananke*>) – for instance, when a tyrant threatens someone that he will kill his family if he does not perform a reprobable action. Such situations are those in which external conditions coerce the agent to perform an action *against* his will / intention, therefore “*not voluntary*”; however, the agent performs the action itself *voluntary*, in order to avoid a greater harm.

We are therefore speaking about an action which is *not voluntary* as it is performed “under compulsion”, but at the same time it is *voluntary* because the agent “freely chooses” to perform the action. In normal conditions the agent would not choose to perform the specific action but, given the particular circumstances, he chooses to perform the action as he is coerced by a context which he cannot control. The agent acts against his will (not voluntary) but, nonetheless, he chooses to perform the action because it is the best option given the particular circumstances (in this respect, the principle of action is in him).

Therefore, from a general point of view, mixed actions are voluntary actions, but from a particular point of view, they are not voluntary actions (1110a, 15). I consider Bostock (2000) advances a pertinent point of view here: what is unclear (mixed) is the agent’s *will*, as on the one hand, he wants to perform the action but, on the other hand, does not want to do so. His *decision* is, nonetheless, clear, and this point is relevant in analyzing moral responsibility ascriptions. This is why Aristotle notes that, in such situations (1110a, 20), the agent may even be praised for his action – hence the rather voluntary character of his action.

Another way to understand mixed actions in the Aristotelian view is to specify that, even though the *principle* of action is in the agent acting under compulsion (because he chooses, in the end, to perform the action), the *purpose* of the action is determined externally by the one who coerces the agent to act (Mureşan 2011). This is a point put forward in *Eudemian Ethics* (1225a, 10-15), where Aristotle seems to imply that we can speak of actions which are ‘in a way’ performed under compulsion not only in the situation when the agent cannot completely freely choose the action he performs, “but also in the situation when he cannot freely choose the purpose in view of which he acts” (Mureşan 2011, 67, note 26). In the example with the tyrant who coerces someone to perform a certain reprobable action under threat of killing his family if he doesn’t, the agent’s action is mixed because the purpose is determined externally, while the agent has a limited array of options as he chooses among “purposes fixed by others” (Idem).

It is important to highlight here that we do not include in the sphere of actions performed “under compulsion” (not voluntary) cases when the agent acted with pleasure, because this means that he acted according to his will, therefore completely voluntary (and we can therefore blame the agent for his actions). Moreover, in order to consider that the agent acted indeed under external coercion – and to absolve him of blame (but not of moral responsibility) – it is

necessary, on the one hand, that the coercion is such that it is beyond human nature to resist it and, on the other hand, that performing the action “under compulsion” generates a lesser harm than not performing it (1110a, 20-30).

Voluntary actions. Much of the effort needed in order to determine the realm of voluntary actions was already carried out by Aristotle in defining *involuntary actions*, where the agent is neither blameworthy nor praiseworthy for his actions, that is, he is not to be considered morally responsible. This category of actions covers situations in which the agent either acts “by force” or “because of ignorance”. The latter category further includes the subclass of “not voluntary” actions, performed against the agents’ intentions or will: because of ignorance regarding the particular circumstances in which the action is carried out and at the same time contrary to the agents’ will or intentions, as he regrets his actions after finding out all contextual details of his action. In turn, actions performed “in ignorance” do not absolve the agent of praise or blame, even though he might not have intended to perform some specific actions while being, for instance, angry or drunk.

To these categories Aristotle adds another one, *mixed actions*, that is, performed “under compulsion”. These actions are considered to be “rather voluntary”, therefore make the agent to be liable to praise or blame for his action. But as long as such mixed actions are performed against the agent’s will or intention, the agent may be excused or even praised for his action. We therefore have two situations in which, even though the agent is to be considered blameworthy or praiseworthy for his action (therefore morally responsible), he may nonetheless be forgiven or pitied. Namely, it is when the agent acts either “because of ignorance” or “under compulsion”, but with the necessary requirement that he afterwards regrets his action.

Having framed these categories of actions, Aristotle then defines the sphere of **voluntary actions** in a negative way, as opposite to the class of involuntary actions. Hence, voluntary actions require the satisfaction of three simultaneous conditions: (1) the principle of action is in the agent and not outside, that is, the agent does not act “by force” (1111a, 20); (2) the agent knows the particular circumstances of his action – he does not act “because of ignorance” (1111a, 25); (3) the action is not performed “under compulsion” (1135a, 24-35).

1.1.2. Deliberate Decision (Deliberation)

Among the voluntary actions, Aristotle further identifies a subclass which is particularly relevant for the problem of moral responsibility ascriptions, as it is directly linked to the status of vices and virtues. These are the voluntary actions based on a *deliberate decision* (*prohairesis*) (1111b, 10; 1135b, 10), in

other words actions which are performed after prior analysis, involving aforethought. Only such voluntary actions based on deliberation are, in the Aristotelian framework, specific to the rational individual, while generic voluntary actions are also available to children or animals. According to Aristotle, only this specific type of actions may indeed be considered virtuous or vicious, performed by a virtuous or vicious individual (Muresan 2007).

An important highlight concerning the agent's deliberate decision is that, according to Aristotle, the object of deliberation is "what is up to us, i.e. about the actions we can do" (1112a, 30), in other words it is within the agent's realm of action. Moreover, the agent does not deliberate on ends, which are already determined at the moment the agent needs to deliberate, but on the necessary means to achieve them: "we do not deliberate about ends, but about what promotes ends" (1112b, 15).

1.1.3. Individual Moral Responsibility in the Aristotelian Framework

Having now framed the Aristotelian analysis on virtuous and vicious actions, based on the discussion concerning voluntary and involuntary actions, we can now turn on discussing the problem of *moral responsibility* from an Aristotelian perspective. This amounts to focusing on the voluntary actions that are based on deliberation and which may receive two major lines of interpretation. The first line, based on Irwin's (1985) argument, states that Aristotle develops both a "simple theory of voluntary" and a "complex theory of responsibility", the latter involving deliberate decision. The second line, based on Bostock's (2000) argument, states that Aristotle has a single theory and that this is a theory of voluntary actions which involves as one of the necessary conditions that the action be based on *deliberation* (which equals to the agent's "contribution" to that action) in order to consider it as voluntary action.

I consider the interpretation suggested by Irwin to be closer to the Aristotelian text (see 1111b, 10), but with the additional specification that the labeling "complex theory of responsibility" is not adequate, as long as the Aristotle does not employ the word "responsibility". I therefore consider that Aristotle develops, on the one hand, a „theory" (if we may label it this way) concerning voluntary action in Book 5, 1;5 (which does not include deliberate decision) and, on their other hand, one theory concerning the essential characteristic of virtue (as the adequate criteria to judge character) in Book III, 2-4 and subsequently in Book V, 8-9 (where deliberate decision is included as a supplementary criteria to define virtuous actions, besides the condition of voluntariness).

With the analysis from the *Nicomachean Ethics* as a starting point we can now determine the sphere of moral responsibility ascriptions, which includes actions performed **voluntary** (that is, the action was *caused* by the agent, who

knows the particular circumstances of his actions, and the action is performed *without compulsion*) and, at the same time, based on a **deliberate decision**. The voluntary character of the action performed and the deliberate choice are both necessary conditions, but only together sufficient in order to consider an agent as being morally responsible for his action.

It is necessary to make here a final remark regarding attributions of moral responsibility, respectively, blame or praise. Being morally responsible for one's actions further determines evaluating the agent as being blameworthy or praiseworthy for the particular action performed, depending on case. There is, nonetheless, a particular situation in which even though the agent is considered morally responsible for a reprobable action, he is not automatically blamed. This is the case of mixed actions, performed "under compulsion", where the agent may be absolved of blame or even praised, even though the remains morally responsible for the action performed. We can therefore conclude that even though moral responsibility is necessary in order to ascribe blame or praise to an agent, it does not entail any of them (Zimmerman 1985, 355). This also means that while we have an invariant set of conditions in order to assign moral responsibility (Warmke 2011), the criteria used to ascribe blame or praise are variable and context-dependent.

1.2. Individual Moral Responsibility from a Contemporary Perspective

Current interpretations on attributions of moral responsibility generally follow the Aristotelian analysis from the *Nicomachean Ethics* depicting the necessary and sufficient conditions for ascribing praise or blame to an agent for his specific actions, with only few exceptions (Smiley 1992; Strawson 1993). There are mainly two approaches in this regard.

On the one hand, a good part of such interpretations start from specifying *excusing conditions* which absolve the agent of moral responsibility, as his action is considered to be involuntary action. As in the Aristotelian analysis, this covers two possible situations, in which the agent either acts "by force" or "because of ignorance". As a result, scholars then undergo an effort in trying to delineate the conditions which are required in order to consider an agent as morally responsible for his actions, so as he cannot invoke one of the two excusing conditions. That is, the agent must **act freely** (what was termed as "the freedom-relevant" condition (Warmke 2011)) and **knowingly** with respect to the implications of his action ("the epistemic" condition (Idem)).

An important highlight concerning this first category of such current approaches to individual moral responsibility is that each of the two conditions specified actually includes two further aspects identified in the Aristotelian analysis. First, the **freedom relevant condition** (or freedom of action) covers

both the Aristotelian requirement that the agent does not act *by force*, in that he can control the circumstances of the action (De George 1999) or has alternative possibilities of action (Frankfurt, 1969; Fisher and Ravizza 1993; Smythe 1999; Woodward 2007) and that he does not act *under compulsion* (Clarke 1992; De George 1999; Thompson 1980; Wiederker and McKenna 2003).

Second, the **epistemic condition** covers both the Aristotelian requirement that the agent acts *knowing* the context or results of his action (De George, 1999; Fischer and Ravizza 1993) and the requirement that he possesses an advanced level of moral understanding (Clarke 1992; Corlett 2009; Fischer and Ravizza 1993; Wiederker and McKenna 2003), which is more or less the equivalent of the Aristotelian specification of *deliberate decision*. Therefore, this first direction of approaching the problem of moral responsibility ascriptions which focuses on two necessary conditions, namely the freedom-relevant and the epistemic condition covers all four aspects depicted by Aristotle with reference to voluntary action and deliberate decision.

On the other hand, another part of current interpretations concerning individual moral responsibility simply *reiterates*, in a more or less faithful way, the three conditions specified in the *Nicomachean Ethics* for voluntary actions, as well as the supplementary condition for deliberate decision. In this respect, scholars speak of the voluntary character of the agent's action as including the necessity for *intentional* acting (Corlett 2009; De Leede, Nijhof and Fisscher 1999; De George 1999; Zimmerman 1997), which for some scholars equals with saying that the agent acted both *willingly* and *knowing* the particular circumstances of his action (De George, 1999), while for others (Shaver 1985) equals with the idea of choice or deliberate decision. Knowledge of particular circumstances and consequences of one's action is further highlighted by several scholars (Bovens 1998; Corlett 2009; De Leede, Nijhof and Fisscher 1999; Pettit 2007; Shaver 1985; Zimmerman 1997) in discussing the necessary conditions for moral responsibility ascriptions.

Moreover, they refer to the necessary condition that the agent *caused* the action (Corlett 2009; De George 1999; Pettit 2007; Shaver 1985), or that the agent acted *freely* (Zimmerman 1997), a condition further linked with two aspects of the Aristotelian analysis, namely that the agents acts without coercion (Shaver 1985; Pettit 2007) or external force. In addition to this, scholars point to the agent having the necessary mental capacity (Bovens 1998), or the capacity to evaluate available options (De Leede, Nijhof and Fisscher 1999), a condition equivalent with the idea of deliberate decision put forward in the *Nicomachean Ethics*.

II. Proposal on the Necessary Conditions for Moral Responsibility Ascriptions

Based on these current interpretations on moral responsibility ascriptions and on the previous analysis of the Aristotelian discussion of virtues and vices, I suggest the following set of necessary and sufficient conditions in order to consider an agent as morally responsible for an action. This set mainly follows the Aristotelian line of thought, but at the same time attempts to adapt the language to current concerns, while also making more explicit some of the claims from the *Nicomachean Ethics*. As such, in the interpretation which I am advancing, a morally responsible agent who is to be regarded, depending on context, as blameworthy or praiseworthy for his action, needs to:

- a. Have a causal connection, be it direct or indirect, with the result of an action/ omission;
- b. Possess the relevant information concerning the factual context of his action / inaction;
- c. Act based on his own will/ intention, without physical or psychological coercion;
- d. Have the capacity to evaluate the significance and implications of his action / inaction in view of the purpose followed.

The first three conditions are the equivalent of the Aristotelian criteria for voluntary action, while the last condition reiterates the supplementary condition of deliberate decision advanced by Aristotle in order to ascribe blame or praise to an agent.

In the interpretation that I am advancing, the first condition, regarding the *causal connection* between the agent and the action under evaluation is weaker than in the Aristotelian framework and creates room for an *indirect*, mediate causal relation, not only a direct one. There are often situations when, for instance, an agent's decision generates effective consequences which are actually physically carried out by some other agent (usually in organizational settings) – this is a typical case which requires enlarging the causal connection condition to include not only direct, but also indirect causal contributions of the agent. Moreover, in specifying this condition I have included *omissions*, which I find to be equally relevant as actions, as long as they are based on the agent's intention. At the same time, the condition evaluates not only the action / inaction itself, but also its *results* (consequences or implications) as long as they can be foreseen by the agent at the moment he acts.

While the second condition concerning the agent's *knowledge of contextual circumstances* of his action remains similar to the interpretation from the *Nicomachean Ethics*, I have modified the third condition concerning the agent's action free of compulsion as *intentional action* without any physical or psychological coercion.

The additional condition formulated by Aristotle, concerning *deliberate decision* as a criterion for ascribing blame or praise to an agent, is rendered in the interpretation I am advancing as the agent's capacity to *evaluate* the significance and implications of his action or inaction. However, the significance of this fourth condition for moral responsibility ascriptions remains the same as in the *Nicomachean Ethics*, namely the idea to accept in the realm of moral responsibility only those agents who have the capacity to evaluate the implications of their own actions (excluding children or persons who are mentally challenged).

To conclude, in the interpretation that I am advancing, ascribing moral responsibility to individual agents is equal to saying that the agent satisfied the necessary and sufficient conditions defined in Aristotelian tradition, with some annotations mentioned above. But what is the case for situations when individual agents act collectively such that the result of their joint action cannot be exclusively linked to the additive contribution of the agents involved, but rather to the collective effort? I will now turn on discussing *collective moral responsibility*, that is, ascriptions of moral responsibility which target collective agents and I will focus on the particular case of corporate organizations.

III. From Individual to Corporate Moral Responsibility

Are corporations in themselves moral agents similar to the way their individual constitutive members are? Can we speak of the moral responsibility of corporations the same way that we speak of the moral responsibility of individuals? In trying to find an answer to these questions, in this section I will be inquiring whether corporations in themselves are capable of moral actions. To that end, I will ignore ontological, methodological and practical arguments put forward in supporting or denying the status of corporations as moral agents and I will focus instead on analyzing if the conditions previously specified for individual moral responsibility are also valid for corporate moral responsibility. To put it differently, are collective agents such as corporations capable of satisfying the necessary conditions for moral responsibility ascriptions as discussed for individual agents?

III.1. Individualist vs. Collectivist Positions

In discussing corporate moral responsibility, namely whether we have good grounds to speak of corporate (collective) moral agency, scholars generally start from those conditions that an individual human agent must meet in order to be attributed moral agency in the Aristotelian tradition and then

inquire if corporations (collectives) also meet those conditions (Hasnas 2010; Held 1986; Phillips 1995).

The two major answers (positive and negative) offered to this type of inquiry set the ground for the well-known *individualist-collectivist debate* on moral agency. On the one hand, individualist arguments point to the fact that, unlike individual human agents, corporations do not satisfy the conditions for moral responsibility ascriptions, for they have a different status. On the other hand, collectivist arguments hold that collective agents such as corporations display enough similarities with individual human agents in order to satisfy the conditions for moral responsibility ascriptions. Though supporters of each side use various nuances in the arguments they put forward, I will only be interested here in highlighting the points made with reference to the Aristotelian-based conditions for individual moral responsibility.

Causal contribution. One of the conditions discussed by the individualist and collectivist arguments concerning corporate moral agency regards the causal contribution of the agent for a particular action. In order to speak of causal contribution, it is first necessary that corporations have the capacity to act. On the one hand, proponents of an individualist stance hold that only individual agents of corporations are able to act (Velasquez, 1983) and therefore to make a causal contribution, as it is them who actually perform the action attributed to corporations. On the other hand, proponents of a collectivist stance hold that corporations are able to act based on *Corporate Internal Decision Structures* (French 1979), which define a highly organized internal process of decision making that is more than the mere sum of individual decision-making processes and that manages the knowledge, perceptions and motivations of individual members, so as to result in a corporate decision.

Intentionality. Another condition discussed by the individualist and collectivist arguments concerning corporate moral agency regards the agent's intentionality. In this respect, individualists argue that organizations do not display intentionality (Keely 1970; Ladd 1979) as we do not have a corporate "mind" to control collective actions (Velasquez 1983) – we cannot identify at corporate level the connection between intentionality and action present in the case of individual human agents. Moreover, even though corporations could be capable of action, they cannot act intentionally (Corlett 2001) – it is the individual members who act intentionally on behalf of organizations. In turn, collectivists argue that corporations are able to act intentionally as a result of the internal decision making process (French 1979), which allows for attributions of moral responsibility.

Possessing the necessary control. One last condition put forward in the individualist-collectivist debate on moral responsibility is whether the corporate agent has the kind of control over his actions required for ascriptions of moral responsibility. Individualists hold that there is a fundamental distinction between individual agents and corporate agents which bounds us to deny moral responsibility ascriptions to the latter. Namely, organizations are not ends in themselves, but are rather created by individual members to achieve a specific end (Wilmot 2001) and this means that the corporate agent lacks the necessary control over his own actions which is required by moral responsibility (Makela 2007).

In reply, collectivists hold that there are enough similarities between individual agents and corporations in order to ascribe to the latter the kind of necessary control and this is a consequence of the fact that corporations are made up from individual human agents (Goodpaster 1983). Scholars (Goodpaster and Matthews 2001) refer here to both cognitive attributes (rationality, perceptions, coordination) and moral aspects. In addition to this, collectivists argue that corporations are able to display a decision making process with a moral connotation (Donaldson 1982) and, as long as they are able control both corporate acts and the structure of policies and rules generating these acts (Idem), corporations possess the necessary control to be ascribed moral responsibility.

Having now framed the individualist-collectivist debate on corporate moral agency based on Aristotelian-type conditions for ascribing moral responsibility to individual agents, we are now facing the challenge of taking stance with one side. However, I consider that this type of debate is not one which can be settled down by finding one decisive argument or set of arguments favoring one position or the other. The supporters of the individualist and collectivist stance seem to reiterate the nominalist-realist dispute (Soares 2003), with the former holding that corporations are mere aggregations of individual members and the latter arguing that the meaning of the corporation goes beyond summing-up its individual constituents.

Beyond this characterization of the individualist collectivist debate, I consider that the proponents of the two sides are situated in different *paradigms* (Kuhn 1970). This also helps us explain why it is basically impossible to quantify the arguments put forward by each side: they are incommensurable. But with the growing public concern on corporate morality, we may be on the verge of facing, as Kuhn puts it, a paradigm shift, where corporations may finally be accepted in the moral realm. Is there a way to do this?

III.2. A Proposal in Favor of Treating Corporations as Moral Agents

In the interpretation I am advancing, corporations can satisfy the Aristotelian-based conditions for moral responsibility ascriptions and they are able to do so based, on the one hand, on their status of *secondary moral agents*, and on the other hand, on their characteristic structure with *corporate practices*. Before going into details, a necessary explanation concerning our individualist assumptions in interpreting moral responsibility is needed.

Previous accounts discussing corporate moral responsibility – either from an individualist or collectivist stance – generally share one common assumption: that the moral criteria used as a benchmark for responsibility ascriptions should be of an *individualistic nature* (Kuts 2000). This leads many of the collectivist scholars to undergo a consistent effort in trying to find as many as possible common characteristics between collective, corporate agents and individual human agents in order to make room for corporate moral responsibility. But this type of approach is problematic: for instance, individualist concepts of action and responsibility are at least partly inadequate when it comes to collectives such as corporations (May 1987). Corporations exhibit a certain structure which is defining for their behavior, as well as for corporate members' intentions, actions or interests (Idem).

It may therefore be more advisable to treat the moral responsibility of corporations in its own terms, without trying to simply *transfer* the criteria or conditions for individual moral responsibility to the collective level. We should rather see what a judgment concerning a corporate agent means for the corporation itself, and not what this means for individual members and then transfer the conclusions at collective level (Held 1985). What I am suggesting here is, however, not to deny previously-discussed conditions for individual moral responsibility, but rather to adapt them to collective settings (May 1987) by integrating the specific corporate status and structure.

Corporations as secondary moral agents. Collectives such as corporations have a special status given that they have *second-order autonomy* (Isaacs 2006): although they are not able to determine the purpose for which they were created, they do possess the means to pursue that purpose. Going back to the Aristotelian discussion of deliberate decision in the *Nicomachean Ethics*, the following connection can be drawn. When it comes to deliberate decision, Aristotle states that the agents do not deliberate on the end, which is already determined at the moment the agent needs to deliberate, but on the “necessary means to achieve it” (1112b,15). Similarly, even though corporations are not able to determine their general purpose or end, they do take deliberate decisions on a daily basis concerning various courses of actions, given their CID structures (French 1979). But these decisions are more than simply aggregates of individual deliberate decision for they pursue a corporate, collective interest.

Corporations act therefore as *secondary moral agents* (Werhane 2006), only capable of secondary action (Copp 1979) based on the actions of their individual members. I therefore support a similar interpretation to the one advanced by Werhane (1985) concerning the status of corporations, where *ontological individualism* (in that corporations are not real persons, they exist only in virtue of their individual members) is combined with *methodological collectivism* (in that corporations are more than the mere sum of individual members and their actions are not completely reducible to actions of constituting members). In this way, the point of view I am advancing escapes ontological commitments concerning corporations as reified entities (contra French 1979) and accepts that corporations are ontologically dependent on their constituting members (May 1987).

But accepting the status of corporations as secondary moral agents based on their second-order autonomy does not reduce or deny moral responsibility ascriptions to corporations, for it does not imply that corporations are completely reducible to their members. Although they do not exist and act other than through their individual constituents, corporations are complex structures which cannot be fully captured by simply summing-up the actions of individual members. Corporate actions and decisions are more than simply stating that individuals x, y, z have performed a certain action: for instance, polluting a river with chemicals is usually the result of a complex organizational process, not only the result of the joint action of several individual members of the corporation. As long as the corporation has procedures which allow or even encourage such immoral action, there is an overall corporate moral responsibility to be discussed.

Corporate practices as defining the collective structure. Corporations as secondary moral agents are characterized by a specific structure, and this is given by what Kaptein and Wempe (2002, 146-149) call *corporate practices* and which “include the tasks, responsibilities and procedures, relationships, norms and values, etc. that are *actually* expressed in the actions of organizational members”. Corporate practices are formed by two types of organizational structuring mechanisms: on the one hand, the corporate structure or formal dimension (with tasks, responsibilities, rules, procedures); on the other hand, the corporate culture or informal dimension (ideas, expectations and customs).

The importance of corporate practices comes from the fact that they generate the *context* in which individual action takes place, therefore we may have immoral corporate practices but moral individual actions and vice versa. Corporations are able to control and change these practices (Donaldson 1982; Fisse and Braithwhite 1993) through their Corporate Internal Decision structures (French 1979), which are “prescriptive, not only descriptive”, in that they tell individual members how they *should* behave (French 1995).

Satisfying the conditions for moral responsibility. Based on the previous two points, namely, accepting the status of corporations as secondary moral agents and defining their structuring mechanisms through corporate practices, I consider we are now able to argue that corporations *can* satisfy the conditions for moral responsibility ascriptions as previously defined in section II of this paper. This implies, of course, adapting to a certain extent these criteria so as to accept that, on the one hand, corporations act through their constitutive members and, on the other hand, corporations may be evaluated based on their practices in terms of corporate structure and culture.

In this context, corporations are able to satisfy conditions 1 and 3 previously defined as they are capable of *causal contribution* and, respectively, *intentional action* through their constitutive members. In the first case, we speak of mediate causality, as the corporate decision is carried out through individuals, based on CID structures and complex procedures of implementing corporate decisions (French 1979). In the second case, corporations are able to perform actions based on a collective intentionality which is generated free of physical or psychological constraints, inasmuch as individual intentionality is generated this way. One additive point here is that sometimes corporate intentionality may differ from individual intentionality or interest (Pettit 2007), for instance when some individuals are being fired (here the corporate intentionality leads to dismissal of underperforming employees, against their interest and intentionality).

Moreover, corporations are able to satisfy conditions 2 and 4 previously defined given the way corporate practices act as mechanisms which structure collective action. In the former case, corporations are able to *possess all the relevant knowledge* in a given situation, based on a complex institutional process of data management. Corporations exhibit such complex knowledge in everyday activity when, for instance, in the process of reaching a corporate decision to act in a particular way, an impressive amount of information is gathered (Soares 2003). In the latter case, organizations are able to *evaluate the significance and implications* of some corporate action or inaction relative to a goal, as we may identify organizational processes of decision-making (French 1995) which determine a certain corporate course of action to the expense of another. Corporate decisions are made every day and there is usually a complex deliberative process behind them, through which the significance and impact of each such decision is being closely evaluated.

A real-life example might prove useful to illustrate the argument for accepting corporations as moral agents, based on their capacity to satisfy the Aristotelian-type conditions for moral responsibility ascriptions listed above. Let us take a multinational company producing coffee, which is listed on the stock exchange and is under public scrutiny for sourcing coffee unethically, that is, by ignoring fair trade practices concerning the working conditions and salary of employees from third-world markets (where strict legislation is missing). Is

moral responsibility for such immoral practices to be ascribed to individual members of the corporation or rather to the corporation *per se*? I argue in favor of the latter: we speak here of a *corporate* decision to act in such immoral ways. Of course, the corporate decision results from various individual decisions and the resulting corporate act is based on individual action. But this cannot be reduced to saying that specific individuals decided or acted in a certain way, for this would imply missing the entire collective context which generates such decisions and actions.

So how is this company producing coffee actually satisfying the conditions for moral responsibility ascriptions related to the action of adopting immoral working practices? First, it *causes* such immoral actions through a mediate contribution, that is, by adopting the decision to act in this way, a decision which is then carried out by designated individuals. Second, it is able to *act intentionally*, given that such decision is the result of its internal decisions making structures which shape individual intentionality so that they reach the very decision which best satisfies the corporate interest. Third, it *possess all the relevant knowledge* in order to reach and implement this decision, based, for instance, on a research of existing legislation balanced against economic advantage in terms of its share value on the stock exchange. Having met the conditions for voluntary action as set within the Aristotelian framework, the company producing coffee also displays deliberation, as it *evaluates the significance and implications* of its action when adopting immoral working condition: based on its decision-making processes, the corporation adopts this immoral course of action to the expense of respecting fair trade practices in third-country markets.

IV. Conclusion

Throughout this paper I have discussed the topic of *moral responsibility ascriptions* in view of arguing whether collective agents such as corporations are able to bear moral responsibility for outcomes in corporate settings. To that end, I have first analyzed the Aristotelian conditions for ascribing blame or praise to an agent and concluded that individual agents are morally responsible for an action as long as they have acted *voluntarily* (that is, they caused the action while knowing the particular circumstances of their action and acted without coercion) and as a result of *deliberation*. I have subsequently discussed current interpretations over such conditions and made several connections with the Aristotelian framework of moral responsibility ascriptions to individual agents.

Moreover, I have advanced my own interpretation concerning the criteria for individual moral responsibility, in which I tried to adapt and enrich the Aristotelian framework as related to our current concerns on the topic. In this

respect, I have included in the sphere of the voluntary not only the agent's actions but also *omissions*, while also making room for the *indirect*, mediate causal contribution of the agent to an outcome. At the same time, I have discussed the agent's deliberation as his capacity to *evaluate* the significance and implications of his action or inaction.

Going from individual to collective moral responsibility, I have focused on a specific type of collectives, namely corporations, and inquired whether they are able to satisfy the conditions for moral responsibility which we use in the case of individual human agents. With this in mind, I first discussed the way the individualist-collectivist debate treats such conditions when it comes to corporations. I then criticized the *individualist assumption* behind this type of argument, arguing against such an approach which simply translates these conditions from the individual to the collective level. I finally advanced an interpretation in favor of ascribing moral responsibility to corporations based on their status as *secondary moral agents* and their specific structuring mechanisms given by *corporate practices*. In this interpretation, corporations are able to satisfy the conditions for moral responsibility ascriptions, as long as we accept that they operate differently than individual agents and deserve to be treated accordingly, adapting our individualistic concepts so as to fit them into the moral realm.

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A CASE AGAINST CULTURAL EVOLUTION AS A SOURCE OF FREEDOM

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Abstract

This paper aims to discuss how the process of cultural evolution can be seen as leading to the Hayekian idea of individual freedom understood as lack of arbitrary coercion from the part of others. My contention is that the process of cultural evolution gives rise to an improper form of freedom that does not make justice to the idea of individuals seen as ends in themselves. I argue that this happens because the concept of individual freedom is shaped by an essentially impersonal process and tailored for the needs of a collective mechanism.

Keywords: Hayek, cultural evolution, freedom, individualism, private sphere.

Hayek's political philosophy can be described as having a dual nature, comprising both liberal and conservative elements. He argues for a liberal extended society, thus implying a universalistic stance, but at the same time claims that the only desirable source of rules and institutions is the societal evolution, a slow organic growth dependent on the contingencies of an impersonal process of selection. Along the same lines, Gray² and Kukathas³ consider that Hayek's work is indebted to both Hume and Kant, in that the Austrian thinker explains the morality both in empirical terms and from a universalistic standpoint. In this paper I will explore an aspect of this interweaving of conservatism and liberalism, of contingency and necessity, in Hayek's take on individual freedom. More exactly, I will show in what sense the process of cultural evolution can be seen as leading to individual freedom understood as "the state in which a man is not subject to coercion by the arbitrary will of another or others."⁴ My claim is that cultural evolution implies an improper concept of freedom, in that the valuation of the individual as an end in himself is more than this process can generate.

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² John Gray, *Hayek on Liberty*, Routledge: London, 1998.

³ Chandran Kukathas, *Hayek and Modern Liberalism*, Clarendon Press: Oxford, 1989.

⁴ F. A. Hayek, *The Constitution of liberty*, The University of Chicago Press: Chicago, 2011, 58.

My paper will proceed as follows: first, I show in what way the process of cultural evolution makes freedom possible. Then, I analyze the weak points of this causal relation and give a brief account of the problems that the evolutionary genesis of freedom poses for Hayek's individualism.

Cultural Evolution as a Source of Individual Freedom

An explanation of how cultural evolution leads to individual freedom is based on the following two elements of Hayek's thought:

- 1) Cultural evolution operates by selecting those rules and institutions that have allowed the group in which they were observed to survive and prosper.
- 2) General rules allow a more efficient use of knowledge. According to Hayek, knowledge is dispersed in society. The larger the society is, the more difficult is for an individual or a group of individuals to centralize knowledge and to carry out the task of coordinating people. On the other hand, general rules allow individuals to make use of local knowledge while attaining their personal goals. As a result, the spontaneous order that ensues gets to use a large amount of knowledge transmitted across the society in the form of abstract signals.

We can infer from the elements above that institutions protecting a personal sphere will eventually get selected, as they provide an advantage to the society in which liberal rules are observed. Ensuring a personal sphere leads to a more efficient use of knowledge and hence a society wealthy enough to attract immigrants and to defend itself from its enemies. Rules pertaining to individual freedom are prone to be transmitted not only in time, from one generation to another, but also among the neighboring communities, as liberal societies extend their limits in order to include new members attracted by their wealth.

The problem with this reasoning is that we have to make several assumptions for the causal relation between cultural evolution and individual freedom to hold. First, the process should be long enough for liberal institutions to arise. The road from the initial small groups to the extended liberal society is not a necessary one, as there is no guarantee that the mutation pertaining to the personal sphere will arise. The second problem is that liberal societies might not persist despite their wealth and their more efficient use of knowledge. The outcome of the cultural evolution depends not only on rules and institution but also on the interplay between them and the environment. The most obvious example in this sense is Hayek's fear that Western democracies could collapse into totalitarianism because of people being attracted by big utopian projects of reforming the society. Although cultural evolution had led to liberal societies,

there was no guarantee that liberal institutions would not be lost in the state of political turmoil that marked the first half of the 20th century.

In order to avoid the above-mentioned problems we should state the relation between cultural evolution and individual freedom in a more precise way. The process of cultural evolution leads to freedom not in the sense that it generates with necessity a big society in which the private sphere of each individual is protected from the infringements of others. Cultural evolution functions as a source of freedom in the sense that, once liberal institutions have arisen, their success can be explained in evolutionary terms. For example, the spreading of liberal democracies in the Western world can be traced back to a set of institution that proved to be good replicators.

Shearmur identifies a strand in Hayek's thought which relates freedom with civilization⁵. According to the Austrian thinker, individual freedom is what makes civilization possible, because it allows the coordination of large numbers of people through "markets, traditions and evolved systems of rules"⁶. By guaranteeing individual freedom, the states what enables the individual to make a contribution to the progress of civilization⁷. Hayek makes his case even clearer when he argues that the extended society cannot be maintained without individual freedom because it will lack a tool for coping with the problem of the dispersed knowledge⁸. The causal link between freedom and social progress is of interest to the problem of the evolutionary origins of liberal institutions. If individual freedom contributes decisively to social progress, if the extended society could not exist in the absence of liberal values, then individual freedom will make societies more apt to persist and more appealing to immigrants.

However, Shearmur makes a number of critical observations concerning Hayek's claim according to which individual freedom leads to social progress. I will present these observations in the form of two main critiques and I will give a more detailed account of how individual freedom contributes to social progress as I address them.

1. The object of the first critique is the extent of the individual freedom. Shearmur notices that a person can be hindered to contribute to the progress of civilization not only by being coerced by other people. For this reason, Hayek should also take into account the situations in which people cannot use their local knowledge, their unique perspective of the world, because they do not have resources and starve to death. A person that does not have access to health

⁵ Jeremy Shearmur, *Hayek and After: Hayekian Liberalism as a Research Program*, Routledge: London, 2003, 70.

⁶ *Ibidem*.

⁷ *Ibidem*, 71.

⁸ F. A. Hayek, *New Studies in Philosophy, Politics, Economics and the History of Ideas*, Routledge: London, 1978, 65.

care and education is obviously prevented from making a contribution to social progress. Should not Hayek also rule out these limitations, as part of his program of protecting individual freedom?

Hayek's response to this critique is based on the way in which local knowledge is used and transmitted in society. The transmission of abstract signals is efficient only against a background of stable general rules. If the rules have been changed, the signals will also include this variation and hence the message concerning the local knowledge will be more difficult to discern. For example, by imposing a minimum wage, the state alters a number of signals pertaining to the demand for workforce. This also applies in the above mentioned example of the individual prevented to make a contribution to social progress by the fact that he has starved to death. The state cannot provide positive liberties without altering signals. From a Hayekian point of view, the individual contributes to social progress mainly by functioning as a junction in the net of knowledge transmission. This is the reason for which Kukathas characterized Hayek's view as molecular individualism⁹. Individual freedom is protected not because the individual is sacrosanct, but because of the importance the individual has as part of a system.

2. The second critique present in the observations Shearmur offers concerns the universality of individual freedom. Shearmur suggests that not every individual makes a contribution to social progress. As a result, the attainment of civilization does not justify the protection of a personal sphere for all the individuals. However, Shearmur seems to give an incorrect interpretation to the way individuals contribute to social progress.

Civilization, someone might agree, is a wonderful thing. But is the contribution that this person would make, if I were not to coerce them, of any real importance? Surely, the answer is yes if the person in question were Beethoven just before penning his Ninth Symphony; I am fairly sure that the answer would be no, if it were Jeremy Shearmur, just before penning the present volume. But most of what even Beethoven did – in the sense of each particular action – is of little import, in the sense that it is not clear what would have been lost to others had he been prevented from undertaking it.¹⁰

Shearmur assumes that individuals contribute to social progress through discrete acts whose importance is recognizable. According to Hayek, on the other hand, individual contributions are much more modest. Individuals contribute to social progress not in a deliberate way, by providing a product of their work, but by following rules that help the coordination of people in a complex social mechanism. Only this mechanism will function as the real

⁹ Chandran Kukathas, *op. cit.*, 127.

¹⁰ Jeremy Shearmur, *op. cit.*, 72.

source of the new. The inventions that have marked the technological development of the civilization are usually attributed to the individuals that patented them, but their creation would not have been possible without a background of concepts, rules concerning research, and a set of institution enabling the scientific inquiry. The background against which the inventor works has a social genesis and has come into being as a result of people transmitting abstract signals while they followed their personal goals. It follows that by improving the social mechanism of transmitting abstract signals an impersonal mechanism of research and discovery is also enhanced. For this reason, not only the personal freedom of individuals recognized as creators is relevant for social progress. Their success depends on a social mechanism that is most efficient when each individual's personal freedom is protected. Speaking in terms of the example Shearmur presented, Beethoven's symphonies would not have been possible without a certain musical tradition and a particular social environment. In order for people like Beethoven to have more chances to create works like The Ninth Symphony, it is necessary to protect not only their freedom, but also the freedom of the other members of their community.

Shearmur's critique seems to assume a Cartesian conception of the person, according to which there is a break between mind and the world, the mind being able to explore the corporeal substance from afar. Only in the light of such a conception do particular inventions and works of art appear as truly individual contributions. On the other hand, according to Hayek, the mind to which the original work is attributed is a product of evolution, both biological and cultural. Man was "by nature lazy and indolent, improvident and wasteful, and it was only by the force of circumstances that he could be made to behave economically or would learn carefully to adjust his means to his ends."¹¹ Individuals naturally have a behavior dominated by instincts. Only the rules they subsequently internalize, which generally have a social origin, made them escape this inertial state, enabling them not only to follow their long-term individual goals, but also to set these goals in the first place. Without the social mechanism sketched above, inventors, scientists, artists and every other individual whose contribution to social progress is widely recognized would be deprived not only of conceptual tools, but also of the goals that motivates them to work and develop their career in the first place.

The utility of individual freedom for this social mechanism is owed to the superior efficiency with which the community is able to use knowledge when a personal sphere is protected. If an individual is subjected to coercion, he will not be able to incorporate into his actions the local knowledge he would otherwise use in order to attain his personal goals. Individual freedom is thus

¹¹ F.A. Hayek, *The Constitution of Liberty*, 121.

protected because of the importance the individual has in a collective mechanism of discovery.

However, the above described evolutionary process which generates individual freedom also limits its extent, excluding from the definition of freedom positive liberties that do not pertain to an individual's functioning as part of a mechanism of using and transmitting local knowledge. In other words, the same mechanism of selection that makes freedom possible is the one that narrows down its definition. Even if cultural evolution will select at some point in time a broader range of positive liberties, this will have happened as a result of their proven utility. The upshot of this line of reasoning is that we do not have yet the conceptual tools with which people will successfully argue at that point in the future for more positive liberties. The type of evolutionary consequentialism on which Hayek holds forth limits our capacity to engage in an argument concerning the rights of individuals.

The Limits of Cultural Evolution in Generating Freedom

I have shown in the previous section that individual freedom is useful for large communities because it allows a more efficient employment of knowledge. For this reason, societies that have protected a personal sphere for all their members tended to prosper and extend their reach, winning out new members in the detriment of less liberal communities. This eventually led to the extended society Hayek writes about, which comprises so many members that the only way to ensure their coordination is by limiting the action of the state to the imposition of general rules. The first problem of the Hayekian individual freedom pertains to the evolutionary process from which it derives. As I already mentioned in the previous section, the personal sphere is limited to what cultural evolution can generate. The problem with which we deal now is not that societal evolution cannot lead to individual freedom, but that it will make us operate with an improper concept of freedom, from which certain positive liberties are excluded from the start. If we accept a definition of individual freedom according to which the only type of coercion consists in the arbitrary transgressive action of other persons, we will fail to recognize access to education and healthcare as liberties. For this reason, the individual freedom that results from societal evolution does not permit plenty of leeway. Speaking in more concrete terms, we can ask what freedom an unemployed person without education has to follow his goals. He is not subjected to coercion and hence he is free according to Hayek's definition. However, individual freedom proves to be an empty and deceiving concept if it allows this sort of limitations. In such cases, liberty seems to belong to signals, which, given the general rules, are unencumbered in their transmission across the markets. The fact that some

persons should be abandoned to desperate situations is rather a prerequisite for the mechanism that ensures the liberty of signals.

One can argue that by limiting the action of the state to imposing general rules we maximize the chances to prosper for all the members of the community. Hayek himself supports this claim when he argues that “an optimal policy in a catallaxy may aim, and ought to aim, at increasing the chances of any member of society taken at random of having a high income, or, what amounts to the same thing, the chance that, whatever his share in total income may be, the real equivalent of this share will be as large as we know how to make it.”¹² According to Hayek, in a free market society even the least privileged will end up bettering their situation, acquiring more resources than if the society were more egalitarian. In other words, the individual freedom of not being subjected to coercion is likely to bring with it an effective freedom to follow one’s goals. However, this correlation is only a contingent one and will hold, at best, in most of the cases. On the other hand, the freedom of signals to be transmitted arises as a necessary upshot of imposing only general rules.

One can also argue that societal evolution will eventually select more positive freedom, as a broader range of liberties will make communities more efficient. Free health care and a safety net consisting in an unconditional income can alter the transmission of signals across the markets, but their guaranteeing could prove to be beneficial in other aspects. For example, Ha-Joon Chang argues that in societies where social protection provides the unemployed individuals with the prospect of a decent life, people are more inclined to take risks concerning their career, changing their field of work and leaving dying industries¹³. On the other hand, societies that do not provide a safety net tend to make individuals more conservative and more reluctant to head for another career. For them, losing the current job implies much higher costs.

More than that, to alter signals is not as unusual as Hayek makes it seem. If health care is provided for free, this good is removed from the sphere of the market processes, but there are many other goods that enjoy the same treatment. Organ trade, drug trafficking and prostitution are also excluded from the market, because we have moral principles according to which these transactions are wrong. It follows that societal evolution can generate positive liberties as well if it evolves moral principles which will make us remove more basic needs from the market game.

This objection also presupposes an image of the individual according to which he is merely a means of transmitting signals. His fate is not determined by a definite set of inviolable rights, but by the outcome of an evolutionary

¹² F.A. Hayek, *Studies in Philosophy, Politics and Economics*, University of Chicago Press: Chicago, 1967, 173.

¹³ Ha-Joon Chang, *23 Things They Don’t Tell You about Capitalism*, Penguin Books: London, 2010.

process. As I already said, the relation between individuals and their positive liberties is a contingent one, depending on the proven value of these positive liberties. Gray notices that, despite Hayek's consequentialism, Hayekian social philosophy implies that individual rights should be protected in every circumstance. Particular infringements should not be permitted for "the sake of an apparent gain in welfare"¹⁴. However, this universalism holds only at a definite point in time. For bigger periods of time, Hayek seems to allow a certain laxity of laws, which, if seen from an atemporal perspective, implies great inequalities before the law and infringements of rights.

The second critique of the way cultural evolution generates individual freedom is based on the pace of the evolutionary process, on the inertial elements that delay the acknowledgment of new liberties. Even if we had formal rules supporting the equality of chances, the inertia of language and of moral norms could perpetuate certain inequalities. The language we speak now, in a society that recognizes equal rights for men and women, still has the traces of women's oppression. For this reason, both men and women are prone to unintentionally say offensive things and to discriminate against certain categories without being aware of it. The solution is not to wait for the language to exclude the traces of oppression in an organical manner, as a result of an evolutionary process. The intervention of the state is needed here not only to protect individual rights, but also to enhance the functioning of the social mechanism. Once the traces of the oppression have been excluded, formerly oppressed members of the community can use the knowledge they have access to in a more efficient manner.

The critique I am discussing here does not call into question the capacity of cultural evolution to generate individual liberties understood as absence of arbitrary coercion. Despite the fact that the language is still loaded with traces of oppression, all the individuals are equal before the law irrespective of gender, race or religion. In other words, the state protects each individual's right not to be subjected to coercion as a result of other people's arbitrary action. When a language loaded with oppressive traces is being used, the harm that is done is an impersonal one, nonarbitrary in nature. However, the fact of maintaining as a result of inertia a language with oppressive traces is contrary in its spirit to the equality before the law. The role of the latter is to allow all the individuals to use the knowledge they have access to and to further transmit it in the form of abstract signals. Yet, an inertially preserved inequality as the one pertaining to the oppressive language impedes the functioning of this social mechanism. For this reason, cultural evolution as a source of freedom should go along with a rational intervention aimed at calibrating the language to the legal structure of

¹⁴ J. Gray, *op. cit.*, 58.

the rights. This deliberate activity would consist in identifying and incriminating the usage of apparently neutral elements that actually perpetuate inequalities.

Although rational intervention is aimed in this case at protecting individual rights, it operates in a rather communitarian way. The goal can be described as a collective one: the attainment of a new language, of a good that is to be used by everyone. The means through which this is being done consists in sanctioning wrongdoings that individuals might not perceive as such. Many traces of oppressive talk will come up in speech without the speakers acknowledging it. Yet, the perpetrators will be penalized as if something immoral or illegal has been committed, because, although unintentionally, they have contributed to the perpetuation of an inequality. Although this kind of language police operates for the benefit of individualism, since it enhances individual rights, it implies a reduction of the person to her social genesis. The individual is made responsible for his actions merely because, by making him accountable, we attain a socially desirable outcome. Like in the case of the previous critique, the individual is viewed only as a means of transmitting signals.

Conclusions

I have shown that cultural evolution can lead to the protection of individual freedom because communities in which a personal sphere is protected use knowledge more efficiently and thus are better equipped for survival and expansion. However, the same reason for which cultural evolution leads to individual freedom narrows down its extent. Individual freedom generated by cultural evolution is tailored to what this evolutionary process can produce. Individual liberties depend on their proven contribution to the success of the community as a whole. As a consequence, evolution is prone to lead to a type of individual freedom considered by us improper in the light of our moral intuition. Individuals are allowed to a personal sphere only in so far as this has been proven to enable them to use and transmit local knowledge.

This upshot may seem to be without hope. However, there is at least one reason for which our mistrust in the results of the cultural evolution should be mitigated. According to Hayek, the societal evolution from small bands to the extended society is marked by the rising of new rules that administrate the way we are following our instincts. Individual goals rank among these new elements, which have a social genesis, being the results of cultural evolution. It follows that the process of cultural evolution configures not only the extent of individual freedom, but also the very personal goals for whose attainment we need liberty. To challenge the type of individual freedom that cultural evolution has generated also involves a questioning of our goals, since they are tailored after what was traditionally permitted and encouraged. Yet, a complete

detachment from our aims is problematic as rationality operates only in a space already furnished with personal goals and interests.

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INCONSISTENCIES IN PREVALENT APPROACHES TO INTELLECTUAL PROPERTY

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Abstract

The entire ethos of the postmodern and post-industrial world is being transformed. The changes felt in the postmodern era are reflected at the level of economic and social order. Businesses now focus on producing intangible goods, in accordance with the increasing demand of today's society. Of the numerous issues brought to the forefront of cultural, social and philosophical thought and discourse by the changes inherent to postmodernity, the issue of intellectual property rights is one of the more poignant. In this article I will try to stress why intellectual property is becoming an acute problem in our world, a problem which is affecting more and more people. Taking into consideration all the inconsistencies generated by the anachronic application of intellectual property institutions, we need a new approach and a new institutional framework, one that incorporates the interests of the public and is suitable to the dynamism of our ever changing society.

Keywords: postmodernity, art, intellectual property, copyright, property rights, John Locke.

Today's society is a post-industrial one, and, as such, its economic landscape is dominated by specialized services, access to information and advanced technology. In this era of increasing globalization and automatisisation, secondary sectors which used to rely on manufacturing are gradually disappearing, being replaced by niche services which employ advanced technology. This mutation of the economic order brings about changes at a societal level. More precisely, the ethos of the modern world is being transformed and replaced by postmodern and post-industrial mutations. Most successful business models today are based on the production of intangible goods, as opposed to old models which were focused on producing tangible products (Hettinger 1989, 31). The characteristics of the postmodern era mentioned above are raising numerous problems which are leading to the reevaluation of the legitimacy of intellectual property. At this point, a distinction should be made: the objects that fall under the protection of intellectual property are ideas, information and other products of the human

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mind that can be commercialized; intellectual property institutions that are meant to protect the objects mentioned above are copyrights, patents, trade secrets and trademarks. In this article I will try to stress why intellectual property institutions are becoming an issue which is affecting more and more people through generating inconsistencies². In the first part, I will approach the way intellectual property institutions are engendering postmodern art. More precisely, I will analyze the transformation that some forms of art suffer, in the process of being created, consumed and internalized. In this section, the discussion will aim to show why the institutions that are governing intellectual property are anachronic, due to their intensification and failure to take into consideration the changes that are affecting our society as a whole. The second part will be focused on deconstructing the prevalent grounding of intellectual property, the Lockean one. The foregoing discussion implies that there are contradictions inherent in the attempts to justify intellectual property institutions by appeal to Locke's theory of property. Also, the argumentation will uncover why the analogy between tangible objects and intangible ones isn't strong enough for the transfer and application of Locke's theory of property to ideal objects. In the conclusions I will merge the two parts, showing why intellectual property has damaging effects on a societal level, and why at the level of its grounding, the attempt to justify the existence of IP on Lockean foundations fails because it does not take into account some important points of Locke's theory of the emergence of property.

1. The Clash of Postmodernity and Intellectual Property Institutions

Our society is often called a computerized society (Lyotard 1984, 7). This means that the digitalization of all aspects of our lives is growing more and more important. These phenomena lead to a substantial increase in the power of personal and digital means of communication and in the acquiring or production of information, which are directly dependent on the Internet and pertaining technologies. The digital production of information and the growing accessibility of new technologies allow the majority of users direct interaction with the information and data that they create, transmit and receive, by making it possible to alter every bit of it. However, these rapid changes are having a serious effect on the social, legal and political level. As such, creators are in constant conflict with the public concerning intellectual capital and property. The weapons the former use are systematic attempts at strengthening and

² Throughout the article I will be using the term inconsistency as it is referred to in the common vocabulary.

overregulating the Internet and the uses of new technologies, with the help of intellectual property institutions.

One of the fields in which these changes are most easily observed is art, which is itself altered by the increased digitalization of life. The creative process is now open to almost everyone thanks to new technologies. Postmodern art is increasingly democratic, and everybody can participate in the creation, dissemination and transformation of pieces of art. This change is not unnatural in itself: “For as long as art has existed, it has been in flux. That is, art has always gone through a process of denial of its very essence, its right to be art and then redemption, usually in the form of critical acclaim and then institutional acceptance” (Tang 2011, 72). This new type of art, postmodern art, is deeply rooted in the social sphere and has strong political consequences. Sometimes, art is not just one man’s expression but a collective affirmation of an issue that touches everybody in a community (for example Ai Wei Wei’s work). In a certain way, “contemporary art is about learning to inhabit the world in a better way” (Bourriaud 2002, 13). Art in itself is “a game, whose forms, patterns and functions develop and evolve according to periods and social contexts; it is not an immutable essence” (Bourriaud 2002, 11). Hence, art is ever changing by means of being contested, questioned, critiqued, and then accepted and even institutionalized. This is the natural trajectory of art, it is a process that starts with the creator and ends with the public³.

The postmodern era is characterized mainly by skepticism towards metanarratives, by the fragmentation of absolute values, abandonment of the quest for an objective truth and the acceptance and integration of subjectivity in every aspect of our lives (Lyotard 1984, 37). All the manifestations of postmodernity that I have mentioned above are present in the way people create and internalize art. Postmodern art is often called remix art, a kind of making, creating and disseminating art that encourages derivative works. Navas (2010) defines remix culture as follows: “Generally speaking, remix culture can be defined as a global activity consisting of the creative and efficient exchange of information made possible by digital technologies. Remix, as discourse, is supported by the practice of cut/copy and paste”. This also captures the new way of making art, which in turn, is based on appropriation. Appropriation is the process of incorporating and combining pre-existing works in a new piece of art (Schimanoff 2002, 13). The purpose of this process is to use already existing images, videos, music, and thus re-contextualize them in order to obtain a more relevant work of art that signifies more information and

³ I am assuming here a Hegelian account of art. Even though it might seem west-centered, it is the only approach that serves for our purposes, taking into consideration that intellectual property institutions were conceived into this framework.

symbolizes more thoughts and ideas about contemporary society, especially for the digital natives.

Moreover, new technologies allow people to partake in the creative process and become an author. Everybody can create new pieces of art from pre-existing material with the help of a mobile phone, camera, computer or other devices. They can even share it with the rest of the world through the Internet, in the blink of an eye. This is the same process that permits the dissemination of information, news and any bits of data that one may consider useful. This translates into the fact that the categories of creators and the public are becoming deeply intertwined, before finally fading away or transforming in what is now called a 'conducer' (a hybrid between consumer and producer) (Reuveni 2007, 1802). Hence, postmodern art is completely different from modern art. What differs is precisely the way in which people create, receive, share and interact with it. In this ever changing context, the institutions that govern ideal objects are becoming the political, social and institutional material that dictate and delimitate the possibility of a society to continually develop and create the culture that serves as its foundation. Because one cannot freely use an ideal object that is under copyright institutions for the purposes of remixing, without paying a considerable amount of money to the owner of these rights, art is stagnating and progress is being stalled⁴. Moreover, many pieces of art don't get to see the light of day because the cost of finding and negotiating with the copyright holder are too high (Posner 2005, 183). In a postmodern culture that is becoming more and more democratic, participative and reflective, any law or institution that tries to change or stop the natural flow of society and that imposes tough penalties for its breaching, is actually causing more harm than good, by stopping the progress of Arts and Sciences (Williams 2011, 53). In a postmodern world, progress is what subjects systems of knowledge to be criticized, analyzed and sometimes changed. What intellectual property does is precisely to make it difficult for individuals to change the superstructure⁵ of their communities, a thing that is fundamental for a free society. Postmodern

⁴ Throughout this article I am referring to the Progress of Arts and Sciences as is meant in Article I, Section 8, and Clause 8 of the Constitution of the United States. A possible synonym is spread, diffused. For further reading on the ambiguities around the concept of Progress see Pollack, *What Is Congress Supposed to Promote? Defining "Progress" in Article I, Section 8, Clause 8 of the U.S. Constitution, or Introducing the Progress Clause*.

⁵ In this article I am referring to superstructure as it is defined by Marx: "Upon the different forms of property, upon the social conditions of existence, rises an entire superstructure of distinct and peculiarly formed sentiments, illusions, modes of thought, and views of life. The entire class creates and forms them out of its material foundations and out of the corresponding social relations. The single individual, who derives them through tradition and upbringing, may imagine that they form the real motives and the starting point of his activity". (Marx, *The Eighteenth Brumaire of Louis Bonaparte, Chapter III, Rise of Louis Bonaparte*, <http://www.marxists.org/archive/marx/works/1852/18th-brumaire/>).

culture has developed into one that acknowledges and empowers the average users of the Internet and new technologies, by offering them the necessary tools for expressing themselves, resulting in the emergence of a semiotic democracy (Williams 2011, 53). Along similar lines, Marshall McLuhan argues that: “The medium is the message. This merely to say that the personal and social consequences of any medium – that is of any extension of ourselves – result from the new scale that is introduced into our affairs by each extension of ourselves, or by any new technology” (McLuhan 1964, 7). This means that the Internet, with all its pertaining techniques (including remix art and culture) and technologies are transforming our society structurally, in ways that we cannot yet perceive. Remix art, and more generally remix culture, are the effects of the digital medium, a medium that is affecting the world on a multitude of levels from inter-personal dynamics to the societal and political levels. *In extenso*, remix culture is not a disposable and low culture, but a new way of presenting and representing the world; and this means that copyright institutions should not impede and should not obstruct or even stop the creation of such art. Moreover, intellectual property institutions, by means of overregulating, are affecting both the medium and the message of a new era of digital innovations. What we need is a new design for intellectual property institutions, one that manages to integrate, allow and even encourage the art of remix and collage and all forms of art that are yet to come, and also one that integrates the interests of the public.

2. Problems with the Lockean Grounding of Intellectual Property Rights

Taking into consideration all the problems generated by the anachronic imposition of intellectual property rights on ideal objects in a postmodern era, my next step will be a critical assessment of the Lockean justification of these rights.

The current literature on intellectual property abounds with new justifications and theories. But throughout time, there have been four persisting theories that served as the groundwork for the development of a legal framework concerning intellectual property. One of the most common justification is the natural law right to the fruits of one’s labor. Just as one has property rights over the physical products of one’s labor (be they crops, or any other objects) so one has property rights over the intellectual products of one’s mind (Palmer 1990, 819). Another tradition is the personalist one that states the necessity of property rights for the proper development of personality. There is also the utilitarian justification that bases itself on providing incentives for the creation of socially optimal output of intellectual objects (Hettinger 1989, 48). Another attempt to justify intellectual property rights is to derive them from the retention of property rights in tangible objects. Ownership rights are in this view

a bundle of rights that can be modified and rearranged in order to satisfy both parts of a contract (Palmer 1990, 820).

Among these, the most prominent directions of argumentation in favor of intellectual property rights in ideal objects is the labor-based moral desert theory, which finds its roots in Locke's argument for labor as the foundation of property (Palmer 1990, 890). Proponents of intellectual property apply the same scheme of argumentation as Locke does for tangible objects, in the case of authors, creators and inventors, implicitly for their creations. The view that the author/creator deserves to be rewarded is very much in line with the prevalent view concerning intellectual property. Even though *prima facie* this strategy seems consonant with our common sense, upon a more careful analysis some inconsistencies can be spotted. The first and most important objection to the Lockean justification of intellectual property is the impossibility of the coexistence of liberty and intellectual property.

For the Lockean theory of property to be fully functional, we need to identify the grounds for the justification of the importance of private property. In numerous interpretations, the base on which the whole edifice of property in tangible objects is constructed is the provision of a sphere of liberty (Attas 2008, 33). This sphere of liberty is meant to provide a tangible zone necessary for rendering available the material goods for subsistence (either by itself, or through contracts and exchanges), and the assurance of the level of independence necessary for developing autonomy, that is called self-ownership (Tavani 2005, 88). If an individual is the owner of one's own body, then everything that the body does, namely labor, is also in that individual's property. Because the product of one's labor cannot be separated from the person's labor, ownership of the latter is assured only by owning the former. In other words, ownership of one's person and labor is translated into ownership of the fruits of one's labor. Hence private property is derived from self-ownership (Hettinger 1989, 37). Private property is seen as a contract between an individual and the rest of the world, through which the individual can control the way other people interact with the respective object. This type of property guarantees the liberty of the owner, but limits the liberty of other individuals. Turning back to intellectual property, a natural question appears. More precisely, is there a strong analogy between the consequences of property in tangible objects and that in intangible ones? The answer is clearly no. While property in tangible objects limits the liberty of some individuals concerning a particular object that in intangible ones restricts the liberty of all individuals, no matter the time or the space, because it restricts the use of their own bodies in a certain way (Palmer 1990, 831). Moreover, the right to sell the fruits of one's labor on the market is not a natural right, but a socially created phenomenon that can interfere with other's people autonomy (Hettinger 1989, 40). For example, if a certain dance or way of constructing radios are under the protection of

copyrights or patents, those that are not the owners are prohibited to use their bodies in the way specified by the dance or to engage in the activity of building a radio (even if they legitimately detain the necessary materials). The way in which intellectual property restricts liberty doesn't depend on the material or spatial conditions of accomplishing an action (Attas 2008, 33). Moreover, intellectual property implies a right to control people, mostly because it is enforceable by force and because it is very large in scope. While property in tangible objects limits the liberty of some individuals in relation to a single object, intellectual property limits an entire spectrum of actions for all individuals, regardless of time or the space (Palmer 1990, 829). In fact, asking for property rights over a process (for example, that of building a particular smart phone) is tantamount to asking for an umbrella-right over the actions and the way in which individuals use their bodies.

The main reason for which intellectual property restricts liberty is that the imposition of copyrights or patents is aimed directly at restricting the way in which an individual can interact with his private property that he legitimately acquired (Palmer 1990, 830). For example, if an individual buys a lamp, he can use it as he wishes. He can take it apart and reuse the remaining components, he can try to figure out its mechanism for building other lamps, or he can ask for money if anybody ever wants to use it. All these actions are perfectly legitimate for a tangible object that is protected by private property. But things are completely different for ideal objects. If one buys a painting, even though he is *de facto* the owner of that painting, he cannot do as he wishes with it. He cannot modify it, he cannot copy it, and he cannot disseminate its pictures. So, the right of ownership of the creator or the producer outbalances the property right of the buyer/consumer. Granted, we don't have a hierarchy of property rights in tangible and intangible objects, but even so, it seems that the first category is seen as more important at an individual level in the present legal and political frameworks.

In debates regarding intellectual property, two concepts that seem to have shaped and developed modern society – liberty and private property – are being left aside. Moreover, they are systematically ignored, being seen as of secondary importance to intellectual property rights. Accordingly, creators and producers, in other words, owners of intellectual property capital, can assume a post-sale right of controlling the way in which the object legitimately bought by an individual is being used. In the process of restricting the use of one's private property, liberty disappears as well. All the conditions imposed for using the instantiations of ideal objects in material substrata, transcend a limited sphere of actions and aim, more directly and profoundly, at individual liberty (Palmer 1990, 830). Not only do creators of content assume property rights after the title exchange, but they also feel justified in encroaching upon the private sphere of individuals in order to control the way in which they use certain objects.

A second possible problem with the application of the Lockean argument of property to ideal objects is the inconsistency of the analogy between property in physical objects (to which Locke specifically refers) and that in ideal objects. These two kinds of objects are qualitatively different (Tavani 2005, 87). Even though at a first glance the moral desert of those who, through their work, alter certain goods (either physical or ideal) is indisputable, the use of the same legal framework in both cases doesn't hold, in virtue of the different nature of the objects concerned. A clear distinction should be made: private property refers to the ownership of a material good, which falls under the category of scarcity, rivalry and exclusivity; intellectual property rights are rights in ideal objects that should be differentiated from the material substrata in which they are instantiated (Palmer 1990, 818). One should keep in mind that intellectual property rights offer the owner property in every single physical object that his idea or creation instantiates. Moreover, the different nature of these two types of objects is in part determined by scarcity, rivalry and exclusivity which are not typically consistent with ideal objects (Tavani 2005, 92). While physical objects are characterized by scarcity, meaning that they are limited, and the use of a unit deprives other human beings of the same unit, ideal objects do not fall under this category, especially not in the digital world (Hettinger 1989, 32). This means that everybody can benefit from the use of a movie or a book in digital form, without limiting the number of units available for others, because the marginal cost of providing an additional copy to another user is zero (Hettinger 1989, 32). Although sharing has the effect of preventing the original owner of the intellectual object to sell his property to the public, one should take into account that sharing doesn't hinder in no way personal use (Hettinger 1989, 33). In essence, ideas cannot be counted and indexed. My use of an idea doesn't affect anyone; moreover it can improve the idea, therefore amplifying its utilitarian value. Hence, property in physical objects and that in ideal objects cannot be reduced one to another, and the settlement of a legal framework for one of the categories doesn't offer the conceptual scheme for creating the institutions that are going to govern the other category (Posner 2005, 173).

3. Conclusions

The clash between owners of intellectual property and the public is becoming a cultural war. Current institutions governing copyrights and patents are anachronic, meaning that they are not in concordance with the global changes that alter the modern status-quo. When the majority becomes criminalized by laws drafted by a minority, it is clear that something has gone wrong. We need a new design for intellectual property institutions, one not only

that takes into consideration the interests of creators and producers, but also those of the public.

I have tried to show why the institutions that were created some hundred years ago are not adapted and revised for a better application and functioning in a postmodern world. A culture that becomes more and more democratic, participative and reflective needs institutions that defend the development and improvement of each human being, no matter his or her financial status. On a societal level, it is observed that these institutions affect not only the public, but sometimes even creators, by not allowing them to recreate and remix already existing pieces of material into new content, a new work of art.

From a theoretical perspective, things are not much brighter either. One of the most used arguments in favor of intellectual property is the labor-based moral desert theory. Even though, at a superficial level this theory seems suited for application even in the case of ideal objects, on a deeper level a number of inconsistencies appear. One of them is the impossibility of applying the same theory for objects with a different ontological nature. If such a theoretical framework is suited for physical objects, in the case of ideal objects things are completely different. Locke's theory of property is constructed in order to avoid the waste of limited resources and to provide a context in which these resources are efficiently valued. This means that the main concept taken into account is scarcity. If this theory is wonderfully applied in the case of physical object, for ideal objects it just doesn't work. And this is mainly because ideas aren't subject to scarcity. In the end, if the present institutional framework works on this basis, as I have shown above, the consequences are severe: the restriction of liberty.

What we need is not the abolishment of intellectual property institutions, but a new design for them, one that is grounded in a theory that takes into consideration the nature of ideal objects and the present conditions of our society. For this cultural war between creators/users to stop, we need a new approach towards intellectual property that is well founded and avoids the severe consequences I mentioned above.

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**PERFORMING SUBJECTS, PERFORMING SELVES: THE “TRUTH”
OF SEX, THE IMPOSSIBILITY OF GENDER**

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Abstract

Most perspectives on the postmodern subject revolve around the issue of sexuality and its relevance in the constitution of the subject. Irrespective of the definition we give to sexuality and its related representations on the human body, the critical genealogy of the political practices shows that, in gendering, the body needs to be accompanied by a theory of the psyche. This paper will focus on the intertwinings of political practice and gender constitution and identification, in order to account for a performative stance of the “I” in subjective experience.

Keywords: sexuality, performance, queer theory, Foucault, Lacan, Butler, subject, gender, heteronormative, submission, sexual difference.

The idea of this article stems from the fact that most of us are very keen on the distinction we mentally set between appearance and reality. What I eventually came to realize is that we all set a line between the two, but the way we draw it depends on how we’re constituted as subjects. As this is, to my mind, merely stating the obvious, I shall continue with an in-depth analysis of the way we actually perform the subject we represent to ourselves as “I”. In doing so, I will try to reconstruct the ways in which the postmodern subject can be thought of, by resorting to a deconstructive and genealogical approach. The main focus of the article will be then to highlight the possible interpretations of the subject and its identity, in terms of its sexuality, as presented in Michel Foucault’s and Judith Butler’s work. Also, modern cultural practice has transformed the subject by questioning his or her autonomous status. This is why the boundaries of the individual seem to be blurred, erased and expanded constantly. Even if the subject is fragmented and his / her autonomy is thought of as illusory, we still need to keep in mind the importance of its psychic life.

First of all, there are two considerations that will configure the unfurl of the entire argument. Why should sexuality and, by extension, gender be considered fundamental for the constitution of the subject and its performative stances? Why sexuality and not an inner flying spaghetti monster? Tracing this

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back to Foucault, even the impression of interiority is politically constructed and determined by regulatory mechanisms. This basically implies there is no One or the Other and that the subject is politically determined by the strings of social and cultural significance handled by specifically directed knowledge-based discourse. There is only an individual who is the subject of political discourse and he or she is subjected to its schemes of representation. Biologically speaking, the discussion over the relevance of sex and sexuality in the interpretation of subjective experience can go as far back as the Freudian tradition in psychoanalysis. Pursuing this train of thought would however exceed the purpose of this paper, since it is based on causal explanations that make meaning out of the acts of the subject based mainly on biological sexual givens. Keeping in mind the cultural significance ascribed to gender roles, introduced by the feminist distinction between sex and gender, we could justify this choice by appealing to theories of the constitution of the subject² and its critics (Butler 1988, 519). We can even go back to gender's grammatical stance and its relevance in analyzing the antinomy between the masculine and the feminine in discourse (Kristeva 1982). This would account for the symbolic positioning of the feminine in discourse as seen in Luce Irigaray's writings (Okłowski 2000, 74-75).

Only the reference to these contexts leads to interesting conundrums on the way gender is represented and what gender is. This is why we should return to what seems to be the most basic point of encounter between sex and gender: the body³ (Abigail Bray; Claire Colebrook 1998, 35). Another reason for this would be that the earliest stances we assume in discourse are related, in one way or another, to sexuality and the way it is represented by hegemonic representational structures. In the discussion on individual dynamics, it seems obvious that one cannot talk about a subject outside its cultural context, this is why we need to explore the structures of social and cultural determinations that influence subjective experience (Frosh *et al.*, 2003). Also, assuming that preexisting socio-cultural representations offer the individual the possibility of choice between identities and binary categories, it seems necessary to determine if these categories are fundamental or merely operational and if interiorizing them is an actual choice. In this context, it is obvious that we cannot just talk about sex and its alleged truths, although that would be somewhat more

² Butler constructs a detailed account on possible ways to reinterpret the doctrine of constitution and acts theory. The becoming of the subject in gender is presented as a radical reinterpretation of the phenomenological approach to specific bodily acts.

³ One of the necessary consequences of the fact that the personal is political in feminist theory is a reinterpretation of the body as expressive, not as a mere (alienating) representation of the female body. This is actually the major point of convergence between Foucault's theory and the one Judith Butler develops, since it is considered to be the recipient of all regulatory practices and gender transformations

straightforward, or about what sexuality is. On the one hand, sex talks and their stereotypical constructs are the actual consequences of the political discourse in the deployment of alliance and sexuality in the past five centuries or so (Foucault, 1976). Just a glimpse of Foucault's work shows that. On the other hand, trying to define what sexuality is brings forward mainly the fact that it's a form of discourse, whether it is circulated knowledge or performance through stylized repetition. In other words, it cannot be identified specifically, for it has no identity in itself; outside discourse, that is. In short, there are 'identities' related to sexuality that are embedded in the subject through the authority of knowledge and power and transformations of the same representations through the acting out of the subject in everyday life.

I. The Truth of Sex

The focus on bodily representations as related to our sense of self, subjectivity and individuality does by no means negate the biological sexes or the factual reality of the body. John Fiske best describes the distinction between the humanistic idea of the autonomous individual who possesses the determining force over the course of his life as opposed to the post-structuralist subject by stating about the latter that "this is not to deny that we are all individuals, that is, that we inhabit different bodies with different and unique genetic structures, but it is to say that that part of us which forms our individuality is essentially biological, and does not, therefore, form a major part of the study of culture. What cultural studies are concerned with, of course, is the sense that various cultures make of 'the individual', and the sense of self that we, as individuals, experience. This constructed sense of the individual in a network of social relations is what is referred to as 'the subject'" (Fiske 1987, 48). That is to say that no matter of the interpretation we give to sexuality and gender, this will not change the fact that women give birth and men have greater muscular strength. This is a fact that cannot be denied. However, using it as a pretext to posit political hierarchies that create inequalities is illegitimate too. The sense of self, however, is modified by repetition of stylized acts (Butler 1988) and relations of power (Foucault 1976) that structure society in hierarchies in gendering the body.

Before we approach the matter of constituted subjects, methodological considerations are required. First of all, due to the importance of deconstruction (understood as a method to examine the production of truths, see Namaste, 1994) in framing the subject. Secondly, because queer theory, pioneered by Judith Butler is inspired by post-structuralist approaches and the historical construction of the sexed body as it constructs new identities as viable cultural possibilities. This is why a comparison between Foucault's method and the one Butler applies is needed, as it underlines the importance of psychic life in the

postmodern subject and will emphasize the fact that the gendered body is not merely cultural. Finally, because delimiting their approaches will offer insight on the way the cultural and the social logic are embedded in the subject.

The Production of Sex

For Foucault, the deployment of alliance and the one of sexuality are constructed historically. Here, sexuality is experimented desire and it is expressed in sexual pleasure. This is constantly orchestrated by authority, by political power and its practices. In this case, even if some aspects of sexuality are constantly performed, assuming a position in discourse will still done by reference to hegemonic cultural representations. As he examines the structuring of sexuality, a critique of the repressive hypothesis emerges first (Foucault 1976). The point he makes is that sexuality is not at all tabooed, even in Victorian society. His genealogical approach explains how the medical discourse, sustained by the development of judicial institutions, create the knowledge base of the sexed body. Sexuality is therefore produced through discourse, not repressed, nor censored. In this sense, for an identity to exist, it needs to be present in discourse. If something is not conceptualized in discourse, we cannot fully account for it. This is not to say that whatever is excluded from discourse does not exist. The example of the homosexual is most relevant in this case and it is exponential for the double function of discourse. That is to say, the silencing of certain categories, the exclusion from the abilitated lines of hetero-normative discourse (for an analysis on the able heterosexual body, see McRuer 2003, 80), done by political authorities and the clergy, is what actually creates the “homosexual”. Even if medical discourse asserts the “perversity” of this category, its mere presence in discourse is an attempt to define it and opens the possibility to contest conventional representations of it. This type of constructing the homosexual identity engenders a paradox, as Diana Fuss points out (Fuss 1991, 1-10), since the notion of the closet came along with the political struggle for recognition of civil rights. The assertion of one’s own homosexual or bisexual orientation or transgendered identity comes along with two other assumptions, central to the dominant heteronormative discourse: heterosexuality as central to it and the silencing of other identities. The acting out of one’s own identity is made inside current conceptions of sexuality, we cannot merely stated that we are outside heteronormative discourse, even if we resist it, since the heterosexual and homosexual stances are interdependent and we cannot find meaning in either of the terms without examining them as a binary opposition. In other words, we are faced with the discursive production of homosexual subjectivity and its position in social and

cultural logic, started by disciplinary technologies (Dreyfus, Rabinow 1984,) and continued by media representations (Miller 1991; Doty 1993).

Performance of Sexuality

Butler makes the same point, but the other way around. Her approach is ontological (Butler 1990, 1993). As one cannot have the concept of “raw” before having experienced something that is cooked, one cannot have an account of heterosexuality before having knowledge of homosexual practices. In this sense, every gender representation is derived from the illusion of identity of substances, present in language through assimilation of fictitious unities, considering that persons cannot be positioned in language without the mark of gender. The antinomy between heterosexuality and homosexuality creates stereotypes, but they are not based on an accumulation of ideas based on some identifiable pattern, but on social relations between individuals that have specific representations, fossilized in institutional contexts. Assuming that all individuals are hypnotized by a specular representation of the self (Lacan, 1933), it seems obvious that we rally to whatever we have in front of us as it projects us as recognizable persons. This is why institutional practices that sustain heteronormativity configure the male and the female through the same operational artifice present in establishing the gender of nouns. But whilst in language sex is fictitious and is ascribed by arbitrary convention, the discourse of sexuality cannot be structured in the same way, for it would create compelling and compulsory social fictions about sex and gender, male and female, heterosexuality and homosexuality. Nevertheless, this is what happened in the binary opposition system of genders created through positing heterosexuality as the necessary relation between male and female. Understanding gender this way assumes a causality between sex, gender and desire. It actually suggests that the directed sexual desire expresses one’s gender identity and the other way around, that gender identification can be derived only from manifesting sexual desire towards what is different as biological sex. These are the main naturalizing and normative practices of heterosexuality. While Foucault suggests that even the category of sex is constructed through the condition of sexuality, assuming thus a causality between sex and its tactical production, led by strategic objectives of the mechanism of production. This is not to say that his analysis falls into the same causal explanations that the feminist theory critics (Irigaray, Braidotti, Diprose), but it reflects the fact that he hypostasizes sexual desire, behavior and experience as the effect, as the accidental attributes that surface over the years and that characterize sexual identity as a regulatory and compulsory fiction of cultural and political hierarchy (Butler, 1993). That is to say that his account is still bound to the body as bodily image. Foucault traces

the normative ordering of these attributes into coherent sequential categories of gender. What undermines the existence of the categories and pinpoints their fictitious foundation are the attributes that do not fall within sequential or causal models of intelligibility. That is to say, gender and sex are "produced" along culturally determined lines of coherence, but its materialization in the embodied subject comes along with the performance of a specific representation. As a matter of fact, as Butler states bluntly, "there is no gender identity aside from gender's expressive stances" (Butler, 1993). In short, the representations on gender are the effect of whatever we express when we identify ourselves with some attributes through performative acquirement. The performative stance of the subject is somewhat present in Foucault vision of power as well. Considering that he discusses not only the prohibitive function of power, but its productive function as well, we can see that power and sexuality are coextensive. In this sense, sexuality is not a mere copy of the representations of juridical and medical discourse that define it, but these configurations of sexuality also create and redefine the models of cultural intelligibility.

II. The Impossibility of Gender

By showing that the becoming into gender of a subject is a transformational historical process, Butler emphasizes the importance and inescapability of embodiment as a fluid construct, the site of potential, rather than a fixed given (Butler, 1998, 1993). The active incorporation of representations can be thought of processually in terms of introjection (Rose, 1986) or fluidity (Grosz, 1994, Brennan, 1996), disseminating by doing so the fictitious regulatory character of the dichotomy between the dominant representations and the ones ascribed to femininity as excluded (Butler, 1993; Brennan, 1996), maternal or abject in its configuration (Kristeva, 1982; Kelly, 1993, Stone, 1983; Creed, 1999). That is to say, corporeality and its gendered/sexed aspect are not to be reduced in terms of representation at compulsory and restrictive configurations that are transmitted socially and culturally. The confinement of gender's performative fluidity to such a static dimension disregards the fact that bodies and their significations are aspects of ongoing practices of negotiation, reformation and encounter. In short, one needs to take into account the fact that the existence of multiple identities related to gender constantly questions the alleged stable, masculine stances. By doing so, it produces configurations that conflict, converge or are dissonant with the mechanisms of control designed to obstruct the basic intuition that there can be no model of truth and validity applicable to gender. This is why the debate on the meaning of gender seems to be relevant only in linguistic contexts, considering that its significance for the constituted

subject (Braidotti 1989, 102) can be found only through its performative expressions (Butler 1988, 526; 1993, 30).

In the entire process of comprehending this introjective process, by analyzing its performative positive aspect, we are confronted with the possibility of a metaphorical understanding of subjectification, which goes beyond any symbolic order one might think of. Butler's critique (Butler 1988, 530) towards Foucault is directed at the fact that his writing is still confined to the representative, and, might I add, repressive, historical context, its causes and effects, without discussing the subject's position in this mechanism and without offering a positive account of its capacity to act. The prescription to describe the subject as a performative agent in gender is not utopian, it is merely a recognition of the limits of language and its effects on discourse. The assertive character of a specific psychic energy related to the subject and its positioning in discourse is derived, seemingly, from her affiliation to Lacanian thinking.

Although the psychoanalytical dimension is not the major point of discussion here and cannot be fully accounted for in this last section due to lack of space, it is at least revealing for what should follow in analyzing the postmodern subject as a performing self. Therefore, I will not conclude on this essay in a stereotyped manner, by stating once more what I clarified throughout the arguments above, but I will end by outlining the positive aspects of configuring the subject in such a way, without being dismissive of its psychological dimension. By assuming there is a metaphorical stance that can be ascribed to the performance of the subject, by appealing to Lacanian logics, including concepts such as the symbolic order and the imaginary constructs it fosters, we are immersed in the area of significance, not only of meaning. Even if Butler's account of Lacan cannot be used in therapy and cannot be fully taken into account by psychoanalysis (Campbell 2001, 35-37), it can neither be dismissed as a psychoanalytical aberration, as Copjec sometimes does (Copjec 1994, 210). Rather, her analysis on psychic excess should be seen as a continuation of Foucault's critical genealogy and as a way of pointing out the importance of the interpretations that can be ascribed to collective representations in a subject that breathes, lives, walks, in a word, performs. In short, performance should be viewed as significant for the constitution of the subject. It is not realized only by being subjected to external determinations, but also by being the subject of what one does, thinks and is. This is not to say that, by performing different identities, we are able to configure our own subjects. Butler bluntly states that there will always be something that escapes the alleged natural categories, as "identity cannot be fully totaled by the symbolic, for what it fails to order will emerge in the imaginary as a disorder, a site where identity is contested" (Butler 1997, 97), but that it will help us see these categories as merely operational ones. In this sense, gender has no meaning, but it is significant.

Acknowledging this and its importance for the performing subject is what enables us to underscore the fact that the distinction between appearance and reality is merely fictitious, apparent, might I add, and that it doesn't fully account for the fact that in our 'being somebody', we are performing ourselves. In any case, any analysis on the subject should be complemented by a theory on the its psychic dimension and its performative acts to be able to account fully for the constitution of the fragmented subject through relations of power. In short, we need to start thinking what determines us to draw a line in the first place between what seems to be out there and what actually is.

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**THE SELFHOOD AND THE ASCETIC IDEAL OF THE MODERN
SUBJECT: THE ART OF LIVING
FROM FRIEDRICH NIETZSCHE TO MICHEL FOUCAULT**

OANA ȘERBAN¹

Abstract

Conceived as an analysis of the reception of Nietzsche's ethics, assumed as a project for an aesthetic of existence, at the crossroads of modernism and postmodernism, this article explores the way in which the whole art of living could be interpreted following two significant moments: the "death of God", proposed by Nietzsche, and the "death of the Author", mentioned by Michel Foucault. More precisely, I investigate the way in which the two moments will test common assumptions exploited in different philosophical directions. In this regard, I suggest understanding the manner in which the death of God develops philosophy as an art of transfiguration, endowed with a metaphysical nostalgia meant to influence Foucault's perspectivism and genealogy.

This paper is an attempt to criticize the modern subject – considered through the theme of the selfhood – and the ascetic ideal as elements submitted to the art of living that Foucault inherited from Nietzsche. Thus, I advocate for the development of Nietzsche's ascetic ideal assumed as part of the aesthetics of the existence in which self-denial suggests not only a dynamic conception of discipline, achieved through the equivalence between giving life a meaning and surviving to the weakness, but also a narrative method, dramatized, of opening the subject as an exponent of consciousness. I assume the fact that such a statement proposes accepting a subject consisted in the heritage of "morality of mores" practices, from Nietzsche's construction, resignificated by Foucault in his "practices of the self". This kind of approach seems to present the impasse of the aesthetics of existence caused by the perennial returning at a model of ascetic ideal, adjusted, upgraded, in such a form that modernity is announced, in the light of this movement, as a dimension consecrated to the constituting of the self as a work of art tributary to ethical reforms of the art of living.

Keywords: Nietzsche, Foucault, art of living, morality of mores, practices of the self, selfhood, ascetic ideal, self.

This article is devoted to an analysis of Nietzsche's ethics at the crossroads of modernism and postmodernism, assumed as a project for an aesthetic of existence, built as a revival of the "art of living", as it was perceived in the ancient grid. This approach constitutes a space in which the tension

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between ethics and aesthetics could be abolished, following the canons of “the great style”, using the formula proposed by Nietzsche.

Thus, I will observe the manner in which the aesthetics of existence allows, at the limit, under this structure, assuming the sublime as the will to power. Such an exposure is possible conceiving not what, in the spirit of Shusterman, could mean the program of a “pragmatic aesthetics”, consumed as “art in the living state”, but questioning the legitimacy of such a project, by exposing its problems developed on a double tier of investigation, for which I will deliver potential tools and solutions.

(1) In the first instance, I propose setting up a general framework for analyzing which one of the two canonical moments of a (post)modern program of the aesthetics of existence, raised by Nietzsche’s “death of God” and by Foucault’s “death of the author”, can test common assumptions exploited in different philosophical directions. In this regard, I suggest understanding the manner in which the death of God develops philosophy as an art of transfiguration, endowed with a metaphysical nostalgia meant to influence Foucault’s perspectivism and genealogy. Assuming this formula, I will base a critical treatment of modernity approaching it through the constitution of the subject on the border between the “morality of mores” practices, created by Nietzsche, and the “practices of the self”, constituted by Foucault. In order to draw the conclusion of the first level of my research, I will suggest a possible way of taking into account the philosophical dimension of modernity, by considering Nietzsche’s ascetic ideal a source of inspiration for Foucault’s aesthetics of existence, as art of living between two main coordinates: to give a sense or a meaning to life, and to survive the weakness.

(2) Secondly, I will support this first part of the paper by a return to Nietzsche, delivering a formula for understanding the manner in which the “Self-creation” requires the principal resort for the aesthetics of existence, consuming the report between art and artist as a possible way to regard the philosopher as a “poet of life”, able to discern “the style as a rare science” of a vital practice, both Apollonian and Dionysian. In this section there will be evaluated all the possibilities to transform the modern subject of Nietzsche, into a construct of a relational-self, constituted as a result of self-creation power, developing a thesis which attests the fact that the modern subject, as an actor of the aesthetics of existence, additionally requires a structure that destroys the illusion of a Christian-artist, but recognizes a sense of value’s measure and a process of normalization dedicated to those who are weak. This last part will inspire Foucault’s project of self-government. Thus, I advocate for the development of Nietzsche’s ascetic ideal assumed as part of the aesthetics of the existence in which self-denial suggests not only a dynamic conception of

discipline, achieved through the equivalence between giving life a meaning and surviving to the weakness, but also a narrative method, dramatized, of opening the subject as an exponent of consciousness, following the terminology of Crary and Wall, applied in the project of self-creation art's critique.

§1. Nietzsche's Modern Subject and the Relational Model of the Selfhood. The Practices of the Morality of Mores and the Ascetic Ideal

Nietzsche develops a game of affirmation and negation of the modern subject, inaugurated as the source of a metaphysical criticism of modernity. This is the tool that Nietzsche applies in order to create the difference of shade between aesthetics and aestheticism², that operates as a way of preserving a theory of power. Here, the resistances of a slavery and subjection moral grow, and at the end, "Nietzsche enthrone the yes and the no of the taste"³. Especially between ethics and aesthetics, Nietzsche lies a common core designated by values managed in a registry that measures attitudes and interpretations that not only recovers a discourse of the similarities and the differences between ethical and aesthetical values, but also a integration of "knowledge, moral and ascetic ideal"⁴ in a project created by genealogical instruments. At the limit, it can be argued that the development of Nietzsche's aesthetics of existence as art of self-creation starts from the same original point of modern ethics, announcing the destruction of Kantianism⁵.

² Dominant in this register is the gap between aesthetics and aestheticism, articulated by Habermas as a construct equivalent to "the distance between the value's autonomy and the value's dominance. If Kant's aesthetic is described as an autonomous aesthetic judgment, by autonomy understanding the self-legislating freedom, Habermas concludes that the aesthetic that became aestheticism promises the opposite: it legalize all the valuable sources through the aesthetic ones, plus de causal dependence of the aesthetic phenomenon of other influences: social, psychological or biological". Maftai Ștefan-Sebastian, „*Geniul artistic*”: *Nietzsche și problema creației artistice. Între romantism și avangardă germană* [“The artistic genius”: Nietzsche and the problem of artistic creation. Between Romanticism and German avant-garde] (Cluj-Napoca: Casa Cărții de Știință, 2010), 22.

³ Jürgen Habermas, *The Philosophical Discourse of Modernity*. Tr. by Frederick Lawrence (Cambridge, MA: The MIT Press, 1987), 128-129.

⁴ George Bondor, *Dansul măștilor, Nietzsche și filosofia interpretării* [Dance of the Masks. Nietzsche and the Philosophy of Interpretation] (București: Editura Humanitas, 2008) 117.

⁵ “After Nietzsche, Kant's questions – *What can I know?, What to do?, Why am I allowed to hope?* – are not questioning skills from which they originate. For this reason, their 'objects' have become simple human ideals. They should represent the origin of any critic. (...) Questioning the Kantian philosophy, Nietzsche observes something totally unexpected: his criticism, Kant made a simple inventory of existing values. Trapped in taxonomic habitudes, criticism comes down to understanding and ordering meanings already given. The only stake lies in clarifying values already imposed” (Bondor, 2008, 117).

Axiological pluralism proposes, following the Kantian modern perspective and the moral project of Nietzsche, to accept the value as „part of life’s optic and perspective” (KSA, 5, 26). This is the moment when Nietzsche’s genealogical excursion begins as a creator of values, dynamic, propelling a will to create which relates to the manner of assuming and understanding the truth by analogy with the interpretation that makes possible the reception of the aesthetic truth by a spectator. From this point, genealogy cultivates the art of the axiological criticism, understood as a preliminary step of the aesthetics of existence. Before deconstructing the „grand style” of „self-creation”, represented by the modern subject, Nietzsche states a first approach to the aesthetics of existence: “we need a critique of moral values; first, it is necessary to evaluate their values, and this requires the knowledge of the conditions and the circumstances in which they were born, developed and deformed (moral as therefore, as a symptom, as a mask, hypocrisy, illness, misunderstanding and morality as cause, cure, stimulans, as drug and poison), knowledge that there has not been any so far and was not even required” (GM, §6, 294-295). Furthermore, the moral, discerned as a forum of interpretations, imposes the abolishment of a mask. There is no doubt about the existence of a split between “the good mask” and “the bad mask”, as Vattimo announces them, but they are related to “a sequence of events (of moral nature) enslaving, more or less deep” (GM, 356), which allows the theater of active and reactive power of the forces to give “this ultimate affirmation, exuberant and impetuous, addressed to life” (KSA, 6, 311).

Therefore, is this a good life, consumed as plastic history? According to Bondor, some of those who live like this “take no risks and do not tend to more, but they are calculating their chances, silently and reactively. They convert anything to an instrument, even their existence. They have nothing artistic in their becoming. In fact, this is just a reactive existence. It is a ‘no’ calculated, said to the growth, to the artistic experiment, to life itself” (Bondor, 2008, 126). Nietzsche insists in accepting that “the living does everything not to preserve, but to become more”. In order to reconcile what is apparently an unequal struggle for power, the solution comes from building a resentful ethic, proposing the reaction of the slave as morality pure formal. It has no exercise, no tradition, no practice, apart from a perennial denial of self, which lies to the dipole of a supreme “yes”, part of the moral of the masters, an affirmative one, adversative, even combative. In this dimension of aristocratic morals, moral agents can not be beings of resentment: slavery means a nuclear model of self-cultivation that must control instincts.

In fact, between master morality and slave morality, differences are generated by a certain model of selfhood. For the second one, typological becomes a negative self, which despite its inconsistencies will have the power to appoint, enunciate and even postulate an adverse self, positive, that takes possession of the morality of masters. Simply assumed, “the one endowed with

affirmative will expresses itself every moment, as it is born and crashed according with a Dionysian method. The other one, the weak, constructs the self imagining, before anything else, based on what it felt previously and kept in a corner of its being, a 'non-me', a non-Ego, a sort of negative self (an evil enemy). Based on this projection, he invents, through an antithesis, the 'good' self, assuming it as its own self" (GM, I, §10, 316).

More precisely, the double model of selfhood cultivated by Nietzsche exposes a critical project of constituting the modern subject from a metaphysical perspective, but processed in the horizon of resentment and aesthetics of existence. Generating antithetical types of self which are mutually defined as refractory constructs, it seems that the model of a "relational-self" inspires "the effect of the Nietzschean power of self-creation"⁶. The only amendment that I consider necessary in the development of this exposure is asserting that the whole process of "creating" a "relational-self" associates the constitution of the modern subject with a hermeneutical construct, which precipitated the Nietzschean vision of interpreting the moral phenomena as elements which lose the original meaning, once that there are so many significances related to them. Not accidentally, Nietzsche says that „there are no moral facts. (...) Moral is only an interpretation (*Ausdeutung*) of certain phenomena, and more precisely, a distortion, assumed as a reinterpretation (*Missdeutung*)" (KSA, 6, 98) at the end of which "there is no moral phenomena, but only a moral interpretation of these phenomena. Only this interpretation has an extramoral origin" (KSA 12, 2 [165], 149).

However, resentful ethics is not a project without rest. There is a component of the "*genealogy of morals*" that Nietzsche cultivates as a hybrid of self-creating and reaffirming the moral values, which represents exactly "*the morality of morals*". From this fact there can be developed, under the genealogy of morals, at least four coordinates that realize, in their unified and monolithic formula, the founding premises of moral practices in the key of Nietzsche's interpretation, that will inspire the structure of an ascetic ideal.

At the beginning, we find that "morality of morals" (*die Sittlichkeit der Sitte*) subsumes the moral practices of a whole structure consisting in habits, customs, interpretative processes and actions that dissolved elements that don't manifest a purely moral form. In the background, the moral tone of these practices require the acceptance of a subject that in order to produce the discipline of mores, poses the portrait of a "human built with a sense of measure" (KSA, 5, 293), with a self-consciousness detached from his power and freedom. Moreover, as a moral subject, before becoming the actor of the

⁶ For Ansell Pearson (1991), 275&281f, see Anna-Lena Carlsson, *Ethical Aspects of Nietzsche and Foucault's Writing on Self-Formation*, NSE Conference in Århus, Denmark, May 31-June 3, 2007, 4.

aesthetics of existence, the human being “has his own sense of value”⁷ which allows, on the one hand, operating with the genealogical instrumentary, on the other hand, constituting an axiological complex beyond “the good and the evil” of the morality of morals, taken away from the processes of normalization of a culture of slave morality” (Carlsson, 2008, 3).

§2. An Ascetic Ideal: the Nietzschean Inheritance of Foucault. Modernism and Postmodernism Regarded through a “Graecization” Phenomenon

Nietzsche is operating a culture of “vital practices of exposing the self in a complete denial of morals themselves, practices referring, for example, to solitude, wandering on its own way without following or being followed by someone, forgetting, rather than memorizing the past, questioning old values simultaneously with the creation of the new continuous assessment and ordering hierarchies, in all these there is always a voice asking his own self: “the lack or the overflow is here creative?”⁸.

Carlsson, for example, militates for accepting an authentic perspective for investigating the modern and postmodern culture of the aesthetics of existence depending only on a certain typology of the subject which requires a special ethics. In this respect, Carlsson presents a contrast between the Nietzschean and the Foucauldian programs of the aesthetics of existence, relevant by the fact that their mediation is understood as expressing a common sense through two possible ways of constituting the project of “self-creation”. Thus, both Nietzsche and Foucault adopt a culture of selfhood and subjecthood that manifest three similarities, as it follows:

- (1) If the age of Nietzsche’s “death of God” “develops two essential elements – life-affirming and denying the existence of life by artistic types of existence”, Foucault will extend these immersions on the border of self-practices that are individually self-sufficient with self-care practices, managed in a system of rules, norms and standards of conduct and behavior⁹.
- (2) Even if the influence of the Greek culture on assuming the aesthetics of existence inspired both the Nietzschean and the Foucauldian paradigms, there are differences between them regarding this aspect.

⁷ In this direction, I recommend in order to be consulted, *Genealogy of Morals*.

⁸ See Friedrich Nietzsche, *The Case of Wagner*.

⁹ “We can distinguish between a life-affirming and life-negating type of artistic existence in Nietzsche’s writing. This two-feature perspective can also be detected in Foucault’s thinking, when he distinguishes the practices of self-formation that are self-sufficient, yet depending on others, from the self-negating caring for oneself in adjustment to a system of rules” (Carlsson, 2008, 7).

Nietzsche retains remnants of a pre-Socratic interpretation in cultivating two lifestyles – Apollonian and Dionysian – the first one relying on a form of an individualized subject, by adapting the Delphic maxim – *gnothi seauton* –, taking into account that “nothing should be in excess”(KSA, 1,40), while Foucault will remark individualization as “*self-government*”, renouncing, in this part of its construction, at the primacy of an ascetic ideal in cultivating the aesthetics of existence.

- (3) Both Foucault and Nietzsche are writing an aesthetics of existence inspired by an ethical program projected to dispel individualized “ways of life”¹⁰.

Definitely, the ascetic ideal figure keeps a pre-Socratic counter. The mission of the ascetic-priest, related in the *Genealogy of Morals*, is developed between the quack and the curator impostures, becoming, by its very being, a pharmakon for humanity. The disease suggested is hiding a manner of existence that presents a biological criticism of the subject in the paradigm of the Nietzschean modernity. First, the ascetic-priest is a patient, a subject that needs for its own becoming to postpone an ideal of existence in order to cross all the thresholds that are succeeding in the evolution of the spirit, till the moment when it gets self-control. In this case, the model of a relational-self increases by the blind confession of the “oppressed”, as Nietzsche calls them. The ascetic-priest keeps under his control both good and evil in the same helm, “because at such a thing is good, (...) being a tamer of beasts, around whom everything healthy inevitably gets sick” (GM III, §15, 411). He sends the patient¹¹ to himself by a personal example, the disease being recognized as a unique and canonical fault of a suffering who is changing the resentment’s direction to the moral subject.

“In this respect, the ascetic ideal operates on the same model of faith in an immutable truth that is embraced even by science (GM III, §24, 435). Chronologically, the ascetic ideal was the first guarantor of an immutable truth, science assuming much more latter this function. Here comes genealogy. It is called to dismantle this imagined ‘fact’, put into things by an interpretation which, over time, has forgotten its status, being taken as reality itself.” (Bondor, 2008, 130-31)

¹⁰ In the sense proposed by Lothar Bredella in “Aesthetics and Ethics: Incommensurable, identical or Conflicting?”, in *Ethics and Aesthetics: The Moral Turn of Postmodernism*, eds. Gerhard Hoffmann and Alfred Hornung, Heidelberg: C. Winter Universitätsverlag, 1996.

¹¹ According to Bondor, it may be inferred that ascetic practices can not be located in a remote area of the discursive register, because “here could be seen his qualities, the grace of a teacher (the priest’s grace). The power of seduction and persuasion only here reaches its goal. In a word, it changes the usual habit of patients, which is to seek out why they are suffering outside themselves, in an alleged perpetrator not only guilty but also alive and, according to this quality, being so accessible.” (Bondor, 2008, 129).

Thus, in line with this approach, two are the coordinates that I propose in the analysis of Nietzsche's ascetic ideal:

- (1) Questioning the asceticism "conversion" to a form of manifestation of the aesthetics of existence, evaluating the correspondences, the areas of compromise and the distinctions between the figure of the ascetic priest and the Case of Wagner.
- (2) Investigating how the model of a relational-self is responsible for producing, by its finalities, "the Death of God" as a source of inspiration for Foucault's Death of the Author regarded as an end for the whole humanity.

§3. What Does It Mean When a Philosopher Believes In an Ascetic Ideal? The Case of Wagner

Regarded as a double prehistory of good and evil, as Nietzsche called it himself, the *Genealogy of Morals* announced, after the polemics entertained with Paul Ree, a fundamental split between the origin and the value of morality, dimension in which is gradually constructed the model of an ascetic ideal, endowed with a social¹² function which will inspire the Foucauldian program of the aesthetics of existence, and more specifically, its self-government practices. Nietzsche assumes that „ascetic processes and ways of life are means to remove those ideas from competition with all the other ones, making them “unforgettable” (GM, 339).

Nietzsche's third dissertation begins with an excursion that allows the transition from the ascetic ideal to the aesthetic one, by commuting the perspective of the ascetic-priest with the vision specific to an eideictical speech, tributary to *The Case of Wagner*:

“What do ascetic ideals mean? For artists, nothing or too much, for philosophers and scholars, something like a feeling and an instinct for the most favorable high spirituality (...). What does it mean this change of the ‘meaning’, this radical reversal of direction? Because this happened, Wagner is passing by only one step into its opposite. What does it mean when an artist passes into the opposite?” (GM, 381).

¹² Nietzsche himself admits: “The weaker was the humanity's memory, the more terrible is always the aspect of its mores; more precisely, the harsh character of the penal laws demonstrates us the measure of the effort meant to defeat the forgetfulness and to maintain untouched in the mind of these slaves, dominated by cravings and passions, the few primitive demands of the social life” (GM, 339). These aspects are part of a set of “fixed ideas” that complicate decoding a moral model which must break the pact with the Kantian tradition to promote, as far as possible, a morality of mores, treated also in a hermeneutical way.

No matter the interpretative valences of the ascetic ideal, I consider that it has the quality to express in the same time the affirmation of a human will and the morphology of a teleology which involves the becoming of the modern subject. The Nietzschean ascetics proposes an exuberant vital attitude in writing by its own existence, “a malicious parody of tragic itself”¹³, continued by the fact that “this it would have been worthy, as I said, for a great tragic who, like any other artist, reached the last peak of his greatness only when he can see himself and the art above him, when he knows to laugh at himself”¹⁴. *The Case of Wagner* conceals deep roots in the philosophy of Feuerbach. Artists are disclosing an exemplary human category of those who preserve their independence in a direction developed against all the instincts, even if those are creative ones¹⁵.

However, “what does it mean when a philosopher pays tribute to the ascetic ideal?”. “Here we find at least a hint: he wants to get free from a torture”¹⁶. The aesthetics of existence becomes the poor limit between a way to happiness and another one to power. Apparently, Nietzsche’s ascetics is not “a cult of virtues” but “a better way to get to the good life, an intellectual one, always intended to build a bridge to independence”¹⁷. Between power and happiness the asceticism seems to be the result of a human conduct: “Any animal, and therefore ‘la bête philosophe’ tends toward favorable conditions in which it is able to carry out all the force in order to achieve its maximum power. Any animal hates instinctively and develops its intuitions with alacrity, more than it could with its reason, all kinds of problems or obstacles that are or might be on the path to this optimum (this way is not its way to happiness but is the path to power and action, to intense work and – in many cases – a true road to the evil”¹⁸. Virtue is condemned by Nietzsche to remain “a comedian of the spirit”¹⁹. In this paradigm, Nietzsche inquires, not rhetorically, the sense of the ascetic ideal assumed in the custody of a project dedicated to the aesthetics of existence, as it follows: “What is, therefore, the ascetic ideal for a philosopher? My answer – probably much guessed, is as I write it: regarding his own image,

¹³ *Ibidem*.

¹⁴ *Ibidem*.

¹⁵ Nietzsche developed Schopenhauer’s perspective in the horizon of opera and drama, suggesting a signification for the musician status, by transforming Wagner’s history into a Case: “With the tremendous increase of the value of music, as it seemed to emerge from Schopenhauer’s philosophy, it increased from once the appreciation of the musician himself; he now became an oracle, a priest, someone more than a priest, a witness of the ‘essence’ of things, a call of the underworld- from now on, this ventriloquist of God talked not only through music, but also through metaphysics, and then, what sense in wondering why it ended speaking in one day even through ascetic ideals?” (*Ibidem*).

¹⁶ *Ibidem*.

¹⁷ Dan Geddes, “Third Essay: ‘What is the Meaning of Ascetic Ideals?’ Toward an Evaluation of Nietzsche’s Genealogy, Nietzsche’s Genealogy of Morals”, *The Satirist*, 19 September 1996.

¹⁸ See *The Case of Wagner*, 389.

¹⁹ *Ibidem*.

the philosopher is enchanted by an optimum of conditions for a high and bold spirituality – by this, he does not deny the ‘existence’, but rather affirms his existence and only his, perhaps even to the limit that it is not too far from a wicked desire²⁰. Even if the aesthetics of existence gets negative values, the whole project being inspired from the construction of genealogy, which consumes a destructive process of any values, it remains a source for Foucault’s construction of an ascetic ideal, involving alert but creative resignation, hypocrisy, an unmasked subject and the returning of an original criticism of values. According to Foucault, “Nietzsche is the author of a criticism dedicated to an ideal depth of reason, a depth of consciousness, which he denounces as an invention of philosophers. This depth would be a pure and inner search of the truth. Nietzsche shows how much it assumes resignation, hypocrisy, mask, so that the interpreter is obliged, when he follows the depth’s signs in order to denounce them, to descend on the vertical line revealing that this depth of interiority is, in reality, something different of what it says it is. Depth, restored now as a secret absolutely superficial, is just a game, a fold of the surface. As the world becomes more profound, we realize that everything that exercised the human depth was merely a game for children²¹”.

A true innovation consists in the transition from the genealogical method as an instrument applied into the moral discourse, to the genealogy of asceticism, once that Nietzsche recognizes that “making the genealogy of values, morality, asceticism and knowledge will not mean therefore a start for searching their origin, neglecting all the episodes of the history as being inaccessible, but instead, it will mean the only position against the thoroughness and the hazards, waiting to see masks finally fallen below the image of the other²²”. In this manner, it is easy to understand the manner in which gradually, the ascetic ideal is regarded not only through genealogical methods but also as a criticism of the metaphysical modern subject. Nietzsche’s Death of God is recognized in the same way in which the German philosopher asserts “the ruin of a God, a God who becomes a thing in itself²³”.

²⁰ *Ibidem*.

²¹ Michel Foucault, *Theatrum Philosophicum*, Cluj-Napoca: Casa Cărții de Știință, 2001, 84.

²² *Ibidem*, 187.

²³ In the seventeenth dissertation of *The Antichrist*, Nietzsche explains the ruin of God reminding that his Death remains an important moment for the born of morals, once that they represent “not an expression of life or a frame for the vital instincts, but an abstract construct, hostile to the life, the moral as a bad guard for our imagination”.

§4. From the Death of God to the Death of the Author. Foucault's Ascetic Ideal

For Foucault, the birth of the modern subject is “the human’s death” as a phenomenon that doubles posthumously and without regret Nietzsche’s “death of God”²⁴. Huijer notes that: “Echoing Nietzsche’s ‘God is dead’, in *Les mots et les choses* Foucault announced the death of man. There were two levels to Foucault’s argumentation. He noted retrospectively that before the end of the 18th century, ‘man’ was an unknown figure; not until the late 18th and early 19th century did he appear on stage. Prospectively, Foucault felt that this figure was disappearing and the void of vanished man was ‘nothing more, and nothing less, than the unfolding of a space where it is ultimately possible to think again’ (Foucault, 1966: 353)”²⁵.

The ascetic turn, as it is called by Nehamas, begins at Foucault by building a nucleus in which the Self conversion is possible in order to make truth the fact that “the self transforms itself for a self-fulfillment”. Both Nietzsche and Foucault understood philosophy as an art of living. Nietzsche’s influence on Foucault’s work will be felt, therefore, not only on configuring the theoretical and practical aspects of genealogy and perspectivism, but also in constituting a way of life for the modern subject which crossed a cultural and historical crisis in order to create itself and allowing the humanity to become what Nietzsche recognized as “the poet of your own life”²⁶. The ascetic ideal processes both in Foucault’s and Nietzsche’s version a cultural crisis that reestablishes moral considerations of aesthetics of existence on Greek foundations. Following the letter of the Greco-Roman philosophy, Foucault will thus distinguish between self-knowledge and self-care, assuming the ancient world in two steps: firstly, by making the Socratic maxim – *gnothi seauton* – a canon of life, and secondly, by regarding *epimeleia heautou* – the self care – as a way of destituting the modern project of philosophy as a game of truth, creating from the aesthetics of existence a project that incorporates three

²⁴ “Foucault’s analysis of the aesthetics of existence is presented as an instrument to practice ethical thought without the presupposition of an autonomous subject. The implications of Foucault’s aesthetics of existence for ethical thought are traced to the work of Nietzsche. In Foucault’s work, experiences of oneself are not a given, but are constituted in power relations and true-and-false games. In the interplay of truths and power relations, the individual constitutes a certain relationship to him- or herself. Foucault designated the relation to oneself and one’s existence as the main area of ethical concern and the most important field where aesthetic values are to be applied. In his aesthetics of existence, he invited the individual to problematize the relationship with the self and by using ‘self-techniques’ to transform it into a work of art. The relation to intimate others, shaped as friendship, is crucial to this ethical-aesthetic approach”. Marli Huijer, “The Aesthetics of Existence in the Work of Michel Foucault”, *Philosophy Social Criticism*, 1999, 60.

²⁵ *Ibidem*, 62-63.

²⁶ Friedrich Nietzsche, *The Gay Science*, § 125, 181-82.

ontologies: “the ontology of power, the ontology of knowledge and the ontology of selfhood”²⁷. It is clear that Foucault discovers the art of living as aesthetics of existence following the principle of constituting a “*techne tou biou*”. Life as a work of art involves regarding the aesthetics in a paradigm that attaches its meanings to an ethical dimension, but in this sense, aesthetics is treated in a Greek manner being re-significated through the term of “*techne*” in expressions such as “*techne tou biou*”, developing in conclusion, the art of living.

“However, for Foucault, the death of the humanist subject, that heir to the Christian subject, also created the possibility of an ethics of self-fashioning, entailing both an aesthetics of existence and a vision of asceticism rooted in the Greco-Roman world, and pointing to an overcoming of the crisis brought on by the death of man, a crisis explicitly linked to his understanding of the momentous implications of Nietzsche’s proclamation of the death of God”²⁸. Thus, Foucault adds to the ancient equation of self-care and self-knowledge a resignification of truth²⁹. I observe that the task of separating the elements of selfhood’s art from the Greco-Roman model of those pertaining to the dominant Platonic or Christian perspective requires the contrast between the subject’s objectivity and the relation of subjectivity and truth regarded as sources of a spiritual work understood as *askesis*. In conclusion, the *askesis* is accepted in a larger dimension of conversion, in which the ethics and the aesthetics of selfhood, with Epicurean, Stoic or Christian³⁰ influences, are formulated as an exercise of salvation and ennobling the soul through “the conversion of the self to itself during a narrative process”³¹.

§5. Conclusions: Modernity, from the Practices of the Morality of Mores to the Practices of the Self

I assume the fact that such a statement proposes both to modernity and postmodernism accepting a subject constituted by the heritage of „morality of mores” practices, from Nietzsche’s construction, re-significated by Foucault in his “practices of the self”. This kind of approach seems to present the impasse of the aesthetics of existence caused by the perennial returning at a model of ascetic ideal, adjusted,

²⁷ Gilles Deleuze, *Foucault*, (Paris: Les Editions des Minuit, 1986), 114.

²⁸ Alan Milchman and Alan Rosenberg, “The Aesthetic and Ascetic Dimensions of an Ethics of Self-Fashioning: Nietzsche and Foucault”, *Parrhesia*, number 2, 2007, 45-46.

²⁹ According to McGushin, Foucault understands the truth “not in the quality of a judgment, nor as a particular truth of known objects, but as a fullness of the being that gives itself only to those who were able to work with themselves” (McGushin, *Foucault’s Askesis*, 39).

³⁰ Jeremy Carrette explains: “Christianity is a fascinating immersion into the manner in which the self was formed and educated in a paradoxical act of self-denial. What Foucault was to prove later on was that religious discourses were involving “self-government” both at the macro level of institutional order and the micro level of the individual subjectivation”. Jeremy Carrette, *Foucault and Religion: Spiritual Corporality and Political Spirituality* (Routledge: London and New York, 2000), 149.

³¹ Christopher Yates, “Stations of the Self: Aesthetics and Ascetics in Foucault’s Conversion Narrative”, *Foucault Studies*, No. 8, February 2010, 84, 78-99.

upgraded in such a form that the postmodernism is announced by itself, in the light of this movement, as a dimension consecrated to the constituting of the self as a work of art tributary to ethical reforms of the art of living.

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METAPHYSICS AND QUANTUM PHYSICS: SYNALLAGMATIC CONNECTIOS AND ASYMPTOTIC RELATIONSHIPS

ANDREEA GAE¹

Abstract

Could the paradigm of the quantum physics instrument a metaphysical reconstruction of the natural world? What connections exist between actuality, potentiality and the contradictory complementarity? What are the uncertainty relations and how do they meet the Hegelian Concept or the Aristotelian *energeia*? How does the metaphysics retrieve the negativity of becoming and what is the hermeneutic contrariety of the quantum mechanics?

Keywords: metaphysics, quantum physics, wave, particle, intellect, reason, Aristotle, Kant, Hegel, Heisenberg, duality, Absolute Spirit, Nature, complementarity, actualization, potentiality, negativity, identity, causality, subjectivity, becoming, Self.

Does the reason extract its legitimacy from a scientific extension which predicates its elements, or does it display its conditions of possibility through an *a priori* metaphysics²? Therefore, the expression of a classical metaphysics would be excluded because the intellect cannot access the reason if it is situated in an extrinsic space in regard to sensibility, or, on the contrary, the possibility of the Spirit to transcend the mundanity through a paradigm which avoids an intellect that objectively treats any empirical representation in conformity with the model of science, could be configured in the classical, previous limits.

The classical scientific paradigm, based upon the idea that an empirical and objective universe undergoes rigorous deterministic laws, is seriously affected by the Newtonian mechanics whose equations will be further interpreted as functional descriptions of the movement of material particles in time and space. In the same time, the spatio-temporal coordinates present essential transformations concerning the Kantian Copernican Revolution, the object being translated in the terms of the individual metaphysical subjectivity. Also, the quantum mechanics overcomes the traditional physical vision of the spatio-temporal representation through some abstract, modern coordinates,

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² Roland Omnès, *Quantum Philosophy*, Princeton, New Jersey: Princeton University Press, 1999, pp. 3-5.

while the wave-particle duality, situated in the multidimensional quantum space constitutes the hard core of this theory. Consequently, the conjunction of this reality indicates new internal transcendent characteristics, through which the metaphysics and the quantum phenomenon maintain similarities and contradictions.

Under these circumstances, the present discourse analyses the synallagmatic connections and the asymptotic relationships developed by the metaphysics and quantum physics, in a time when the paradigm of the quantum mechanics requests a reconstruction of the ontological and epistemological foundations of the world, from the perspective of the metaphysical horizon.

Firstly, projected from a Hegelian view upon the Aristotelian hermeneutics of *noêsis noêseôs*³, *energeia* expresses the exponent of the subjectivity, coordinated through the relationship between actuality and potentiality. This approach is executed in multiple hypostases (essence and Concept, teleology and existential process immanent in subject, Self and Absolute Spirit), instrumenting the metaphysical reconstruction. The substantial division that Hegel operates upon the metaphysics (the sensible *ousia* or the Substance itself as a substratum for change, the finite *nous* or the Intellect as a constitutive principle of an *a priori* externality, the divine *nous* as an absolute activity of the Thought itself and its complete manifestation upon Nature and Spirit) identifies the substance of his own concept and actualization, requesting the plenary identity of subject and object to whom the universal itself aspires.

Excluding an univocal determination of the intellect, Kant examines the two terms of this alternative to characterize the intellect as a faculty of the necessity. However, an intellect that eliminates the sensibility is simultaneously necessary and impossible. On the one hand, it is necessary if the intellect generates abusive metaphysics, purely formal expressions unable to develop a certain knowledge, which are, of course, condemned by Kant; additionally, an autonomous and necessary intellect is a condition for a metaphysics of morals, independent of the sensibility and its interests. On the other hand, the process involves an autonomous intellect whose impossibility is justified by the vision which created it, because it is permanently limited to the sensibility beyond which its substance would be lost, configuring a peculiar space where the metaphysics of nature becomes the solely viable metaphysics. Hence, it involves an intellect as a faculty of the necessity, and nevertheless, a necessity that answers to the problem of suspension of any assumption, to the impossibility of the persistence of antagonistic and alternative statements; in other terms, it introduces a necessity of the scientific emergence and experience, a necessity whose sensibility represents, consequently, a material veracity.

³ A short formula of the well-known Aristotelian assertion, used both by Hegel and commentators concerning the discourse on the divinity, where God is a thought thinking itself (Aristotle, *Metaphysics*, Λ 9, 1074b 34-35).

Anyway, a reply to a denied interrogation cannot be justified in the virtue of the question itself, because the presumed reply is rejected through the act of abolition of the problem; and, if the interrogation is abolished, the answer is impossible and futile too. In a distinct hermeneutics, this reflects an illustration of *Meno's* paradox⁴, which is inevitable if the difference between interrogation and answer is reduced to an undifferentiated unity of reason that constituted, for the ancient Greeks, the statement or the judgement. The knowledge of the researched object excludes then an axiology of the scientific approach and, in opposition, its ignorance or its objective occurrence eliminates the possibility of existence, because if something theoretically exists, requiring to be researched, then it will evade the research itself. The object should be given in the absence of an *a priori* knowledge, acquiring in this way the status of an object without being. If so, what should the connection between this paradox and the contradictory function that Kant attributes to the intellect consist of?

If the empirical object, the one that should be known, is similar to the object conferred to the sensibility, the intellect becomes unnecessary for the constitution of the object itself, which is already given. On the contrary, if the object divides itself and requests a status of duality, then the objectivation generated by the intellect cannot coincide anymore with the object of the sensibility. The intellect is, consequently, unnecessary for the process of knowledge of the object, or even impossible: it is futile, because it autonomously extracts itself in regard to the sensibility that already contains the object, and it is impossible, because it presents itself as an inexorable entity connected to the sensibility that is always transcended (by the intellect) in the process of configuring a certain object. However, constraint by the paradox of the propositional knowledge, Kant simultaneously sustained both thesis: the object is given and it is not given; the intellect is autonomous and it is not autonomous. The inutility is canceled inside the possibility, and the impossibility underlines the utility: the thought of the object is useful, because the object itself is not given, but it is different in regard to the result, while the potentiality of this hypothesis is valid because it researches an object identical to the given one. The consequence of this necessity of conceiving the synthesis of the intellect and sensibility, possible and simultaneously useful, generates the metaphysics of the Kantian *Critique*⁵, the polarization of the concepts and intuitions defining for Kant the knowledge itself, while the paradox adjacent to this synthesis exclusively interfeares in the moment when the relationship with the object is directly thought: we assist to the emergence of the duality of an autonomous intellect, directly connected to the sensible object, and to the

⁴ Plato, *Complete Works*, "Meno", edited by John M. Cooper and D. S. Hutchinson, Indianapolis/Cambridge: Hackett Publishing Company, 1997.

⁵ Immanuel Kant, *Critique of Pure Reason*, translated and edited by Paul Guyer and Allen W. Wood, Cambridge: Cambridge University Press, 1998.

involvement of an intellect that excludes any possible relationship with the object outside the sensibility.

In other terms, in the first instance, the Transcendental Deduction of the Categories implies specific consequences, tangent to the object. In the *Critique A*, the given object differs from the cognoscible object, being simultaneously identical: avoiding the paradox, Kant introduces the contradiction of the *noumenon* – an object that is simultaneously similar and different in regard to the given one, although it can be in this manner; it is necessary and impossible, in the same proportion. In the *Critique B*, the discourse researches a singular object, while the difference, though necessary for the construction of the unity of the synthesis, is this time rejected; the analysis accepts then a dissociation of the *noumenon*, a dual *noumenon*, the negative and the positive, available for each faculty and for its correlatives. Concerning this second instance, the Deduction approaches few consequences tangent to the subject. In *A*, the given object and the cognoscible object both have a distinct character, even if this relationship is nevertheless impossible; consequently, the discourse introduces the pure consciousness that realises the reflexive synthesis, the unity of the two apparent contraries. In this manner, though, the consciousness becomes self-consciousness and consciousness of the object, eliminating the difference through the reflexivity and constituting the distinction and the synthesis in a single entity; therefore, the resultant is the identity itself, because the paradigm exclusively presents a singular consciousness. The self-consciousness is, in *A*, synthetic in its relation to the object or, being reflected in such a synthesis, the analysis confronts the risk that the identity-difference of the object, already transformed into a difference-identity at the level of the subject, will induce the appearance of an objective, synthetic character to the pure subject or to the Spirit itself. In *B*, the process is retrograde, though the result and the consequences are identical. The scission of the subject and object involves the incognoscible character of the pure subject, this distinction being a direct product of *Meno's* paradox, because the difference between subject and object reproduces the one of the subject itself that knows without knowing, having the *a priori* possibility of learning (in other words, the possibility of making an object), in the absence of an *a posteriori* that completes the objectivation by rendering its utility. In fact, the pure reason divides itself upon the dualism of the intellect and sensibility, a modern valence of the paradox of synthesis that identifies its expression in the Hegelian dialectics.

Under these conditions, the identity is exclusively possible as a hypostasis of the negation or a distinct character, the Thought and the Concept being negatively apprehended in a gradual and evolutive comprehension of the subjectivity; for Hegel, the Logic is animated by a dialectic movement where the Concept presents an inherent negativity and dialectics which reciprocally assume themselves. The contradiction transgresses the objective, finite space

and the negativity confers an essential and positive function to its determinations, because it signifies the vector of the self-*consciousness* of the Absolute Spirit or its accomplishment of the essential self-knowledge, a becoming conjugated through the identity and non-identity, the abstract identity being a non-identity because it denies the entire becoming.

Accordingly, the equation excludes a finality, though it allows an *entelecheia* in the context where the essence represents a becoming tangent to the externality, an actualization of a teleological potentiality. In specific terms, the Aristotelian essence refers to the final causality and functionality of the Concept: the substance does not constitute a reflexive abstract, on the contrary, the concrete universe contains in itself the principle of its self-actualization. Therefore, *energeia* presents itself in the expression of a reconciliatory entity of the essence and sensibility, under the circumstances of a negativity of its own substance, Self-movement and totality.

Next, the Hegelian interpretation of the Concept as an *energeia* shows the process of the self-actualization of the Thought within the finite reality. In this manner, *energeia* signifies, in the Hegelian hermeneutics, the actualization of a potency immanent in a subject situated in evolution or movement, an activity whose intrinsic reference executes its function in multiple manifestations: from the grounding of the essence itself to the Concept, from the teleological process to the natural translation of the existence, from the human being's essence to the ways of knowledge and act within the most internal dimension, which is the absolute Thought that identifies its object of thought in its own substance. The notion transposes its correspondence in the Aristotelian *noêsis noêseôs*, the antecedent of the Absolute Spirit and the element used, in fact, in connection with the *Encyclopedia*⁶ itself. In the vision that Hegel attributes to the Aristotelian interpretation and in the context where the matter is similar to the force, the soul becomes the center of a permanently active "energy", even if this one is not entirely actualized, for instance in the case of the inferior perceptions. The soul does not fundamentally differ from the body; the continuity of the reality is offered by the manner in which all substances and values that exhibit *entelecheia* represent in fact active forces, when these ones are accompanied by perception or representation, becoming souls.⁷ Since the connection between soul and body, matter and consciousness is unalienable, the transition is realised through the unconsciousness, as an inactive and virtual fundament of the

⁶ G. W. F. Hegel, *Enzyklopädie der philosophischen Wissenschaften im Grundrisse* (1827), ed. W. Bonsiepen and H. C. Lucas, in "Gesammelte Werke", Verbindung mit der Deutschen Forschungsgemeinschaft, ed. Rheinisch-Westfälischen Akademie der Wissenschaften, Hamburg, 1968; idem, *The Encyclopedia Logic*, translated by T. F. Geraets, W. A. Suchting and H. S. Harris, Indianapolis/Cambridge, 1991.

⁷ G. W. Leibniz, *Nouveaux Essais*, II, § 21:1 in *Die philosophischen Schriften von Gottfried Wilhelm Leibniz*, edited by C. I. Gerhardt, Berlin, 1875-1890, p. 155.

reflection of monads upon themselves. The soul is the active force or the nucleus of the dynamic relationships, the *entelecheia* of the soul being then conceived as a perfection and self-sufficiency. Stranger to the passivity, the intellect is, therefore, always *actio*.

Consequently, Hegel hermeneutically transforms and appropriates *energeia* to define the Spirit. Essentially, the Spirit represents the actuality, the Self or the subject containing in itself its own movement and *telos*, whose expression detaches in the actualization of its own potentialities, in the self-identity and in the assumption of contents always distinct and innovative. During his lectures on Aristotle, Hegel affirms that “*energeia* is more concretely subjectivity”⁸. Hegel focuses on the notion of *energeia* in the process of reconstruction of the *Metaphysics*⁹, introducing three types of substances: the sensible *ousia* (the Substance) as a substratum of the change, the finite *nous* (the Intellect) as a formative principle of an *a priori* externality and the divine *nous* as an absolute activity of the Thought itself and its complete manifestation in Nature and Spirit. Therefore, if *ousia* is identical with its concept, this one being the subject of its own actualization, then God is, firstly, through the Thought itself, the complete identity of the subject and object to whom the entire universe aspires; secondly, Hegel situates the idea of its natural subjectivity inside the *physis* (the Nature), in the theory of Form that contains its own potentialities intended for actualization or the movement of achieving its own *telos*. However, if the *Metaphysics* represents for Hegel the quintessence expressed in the avatar of his speculative Idea (God), *De anima*¹⁰ incarnates the unification of the natural subjectivity and Spirit, from the finite form to the Absolute.

For Hegel, in *De anima*¹¹, the subject of experience acquires the valences of *hexis*, active potentiality, *Aufhebung* or negation of the externality, arguing that the different forms of life, knowledge or action are unilaterally conceived as moments of the actualization of an unitary process, *entelecheia* or the living Spirit. Hence, *De anima* cultivates: the Soul as a synonym of the activity of life, inseparable from its own manifestations and development, although it is situated in relation to different characters (in *Logic*'s terms, the Idea); the negativity of Spirit, for whom each finite form becomes matter of a superior form, reflecting the reality; the synallagmatic character of Spirit, manifesting its emergence and

⁸ G. W. F. Hegel, *Vorlesungen über die Geschichte der Philosophie*, edited by G. J. P. J. Bolland, Leiden, 1908, p. 154. This statement contradicts the modern idea, reflected through Baumgarten and Kant's philosophical vocabulary and having a Cartesian inspiration, which affirms that the subjectivity constitutes the *cogito* by excellence, being opposed to the objectivity and overcoming it.

⁹ Aristote, *La Métaphysique*, translated by Jean Tricot, Paris, 1953.

¹⁰ Aristote, *De l'âme*, translated by Pierre Thillet, Paris: Gallimard, 2005.

¹¹ “The best and even the single speculative work ever written in the Philosophy of Spirit”, G. W. F. Hegel, *Enzyklopädie der philosophischen Wissenschaften im Grundrisse*, 1830, edited by F. Nicolin and O. Pöggeler, Hamburg, 1959, § 378.

ascending, in this way, through Nature, to the ultimate Truth; the sensation as an identity of perceiving subject and perceived object, or as an intrinsic activity of the receptiveness, next to the actualization of senses in the context where the Spirit builds its receptivity in determined directions; the paradigm where the Self is represented as a potentiality or *hexis* that preserves and sublimates the assumptions of the memory, justifying the continuity of the experiences; the intellect that classifies the inferior forms of knowledge, ascending to the self-knowledge; finally, the unity of will and reason.

Hegel thinks that Aristotle induces to the nature, change, becoming itself an internal intelligibility; the substance as a passive substratum does not have to be opposed to the movement, nor the form or the essence to the becoming, overcoming in this manner the Platonism from the perspective of the concept of the immanence of Form, where Hegel identifies the principles of the “pure subjectivity”, which “Plato lacks”¹². For Hegel, the immanent form constitutes an *archê* or the indefinable cause, unexplained in the absence of the abstraction or isolation, that does not interfere in the subject who undergoes a certain change, additionally or independently of his essence. On the contrary, the cause is contained by the process of its own actualization, because the essence of Being does not exist independently of itself, but it is conceived as a finality – Hegel calls it a Concept – that attributes to the Being the necessary movement for acquiring its own finality or *telos*. In Hegelian terms, the Being becomes concrete, through the Concept, *energeia* representing, in the end, what Hegel denotes through the subjectivity, the Concept as a cause of its own being and movement or an actualization of the Form. The Concept concretely exists within reality and, nevertheless, it is exclusively present as a hidden potentiality, because its existence constitutes the object of the actual thought; the universal represents the essence of the natural being and physical laws, creating the objectivity of the existence, and, in such a case, it cannot be identified in the natural space. The context will introduce the moment of the Idea, a product of the absolute activity of the Thought. In an arbitrary manner, Hegel identifies the existence of the universal or the one of the universal and objective intelligibility with the Aristotelian passive *nous*, then, respecting the order of the opposition of the objective determinations of the Thought, with the self-consciousness, while the Concept is replaced with an absolute Self or active *nous*. The object, as an expression of the conceptual synthesis, is produced within the Self through the unity of Thought, resulting, consequently, the identity of the Self with itself and the identity of the subject with the object. For Hegel, Aristotle is retrieved through the paradigm of *Vereinigungsphilosophie* (Philosophy of unification), in opposition with the Philosophy of Reflection or

¹² G. W. F. Hegel, *Vorlesungen über die Geschichte der Philosophie*, edited by G. J. P. J. Bolland, Leiden, 1908, p. 153.

the scission of the modernity: the sensible is not anymore opposed to the reason, nature and Spirit, but it rather spread itself in its immediate substance (*Grundlage*), the distinct character of the Idea in whose extension the Spirit appears only for coming to itself through a process of actualization being simultaneously attributed to the divinity too – in other words, the gradual imminence of the Idea in regard to its own self. The finality of the Spirit is not external, on the contrary, it is internal, as a last resort; in Aristotelian terms, the activity of Spirit is complete (*teleia*) even if it incarnates a certain production or creation, because this generation represents for Hegel, as the theory or practice, a self-production of the Spirit within the reality. In the dialectics of the *Nicomachean Ethics*¹³, the *energeia* of the Spirit represents its own *eudaimonia*: “The eternal idea that is *in and for itself* actualizes, produces and enjoys itself as an Absolute Spirit”¹⁴. In this *Beisichselbstsein* or *being-in-itself*, Hegel realises *a homogenous identification with the Aristotelian thêoria, praxis and poiêsis*.

Also, Hegel singularly instruments the paradigm *thesis – antithesis – synthesis* in the context *in itself*¹⁵ – *for itself*¹⁶ – *in itself-for itself*¹⁷, translating it in the terms of a mechanical production whose finality is absent, the structure being opposed to the model. For Hegel, the problem has not a verbal articulation: something is denied, but not through the verbal entity, but in a concrete manner (we deny some possibilities), so the becoming defines itself and through itself, any logical participation being excluded. The logic is animated by a dialectical movement, while the Concept has an inherent negativity and dialectics which assume themselves. The negation is not, this time, a predicative and discursive negation, but a general and universal principle, valid for any relationship. The identity is exclusively possible as a hypothesis of the negation or distinct character, while the Thought and the Concept can be now apprehended as a negation, rational process and evolution, but only if these ones are represented as subjectivity. The subjectivity becomes in this way an individual relationship, a relation of the Self with itself, being sustained through the different character of the negativity. Hence, the contradiction overcomes any finite object and it does not represent anymore the appanage of the Kantian antinomies. However, the Hegelian negativity has an essential and positive function, because it signifies the vector of the self-consciousness of the Absolute Spirit and its self-accomplishment; so, the

¹³ Aristote, *Éthique à Nicomaque*, translation by Jules Barthélemy Saint-Hilaire, Paris: Librairie Générale Française, 1992.

¹⁴ G. W. F. Hegel, *Enzyklopädie der philosophischen Wissenschaften im Grundrisse*, 1830, edited by F. Nicolin and O. Pöggeler, Hamburg, 1959, § 577.

¹⁵ The universal and abstract beginning, that does not have a specific content.

¹⁶ The content seen as an exist out itself (an apparent connection between what appears to be and the original point of departure).

¹⁷ Every exit out of itself defines the Spirit, representing individual moments of its becoming during the process of accomplishing its Self-consciousness.

negativity is not eliminated, but it acquires a positive valence because it incarnates a specific becoming, conjugated through the proportions of the identity and non-identity, the abstract identity being a non-identity because it denies the entire becoming. The concrete identity represents the identity of the identity and non-identity, of everything that gradually becomes, being denied and overcame for attaining a sublimated reintegration. The becoming of the Spirit is coextensive in regard to the unity of reality (the concrete), and not a pure rational, external and a priori manner because, if the Spirit apparently needs Another for becoming itself, this Another is Another as Itself, and not as Other (which is external, additional and hermeneutic through its own intelligibility). Consequently, the scheme remains open, excluding a finality¹⁸, but not an *entelecheia*: we represent some intrinsic realities contained by a more comprehensive reality, the Absolute Spirit. The Hegelian approach shows, therefore, how the Absolute Spirit can be integrated: the metaphor of the circle simultaneously constitutes a premise and a conclusion, an *in itself* (the actualization) that has, anyway, the assumed becoming, an *for itself* (the potentialities) and an *in itself-for itself*, the Absolute or something similar to the Abstract Universal or even the Abstract Universal itself (that accumulates and determines itself).

In these conditions, the Hegelian dialectics retrieves and reintroduces the Aristotelian metaphysics. Inside the reality (the organic matter constitutes the expression of the highest possible reality), the finality has a positive function: the becoming is teleological and it ceases to be the paradigm of a Brownian movement. Hegel retrieves the potentiality and the actuality of the Aristotelian philosophy; the essence represents a becoming, an actualization of a virtuality that teleologically accomplishes its end. Nevertheless, the becoming is not isolated from the exterior, but it is situated in a direct relation with the externality. In an Aristotelian paradigm, the Matter is necessary to the Form, and despite this, the first is situated outside the latter, and that is Hegel's reproach. On the contrary, during his relationship with the externality, the individual actualizes only some potentialities of his own self, without being, in the same time, asymptotically isolated from the exterior (he does not manifest an isolated self-accomplishment). The critique also regards the Kantian universe, where the intellect can determine something in itself, but it can never determine the *self* of something. For Hegel, every determination of the intellect appeals to a vicious negativity, referring to the fact that the thing is not, which

¹⁸ *In itself-for itself* represents a consciousness that retrieves every moment or action created for itself, a metaphysical entity made by the abstract beginning and the multiplicity of the gradual determinations occurred through the evolution of Spirit. The *in itself* is included and retrieved in *for itself*. The substance of the original Absolute realises itself as a subject too, through the actualization of its own potentiality. The finality does not mean, therefore, an ultimate point, but an element situated in the horizon of *in itself-for itself*.

induces a certain limit concerning the hemisphere where the knowledge of the things stops its journey; the connection of the entities is external, and the negativity is external too. Conversely, when the individual's becoming involves his becoming as Another (the Self is this time actualized), the negativity is adequate, which is a *sine qua non* condition for the becoming itself; the negation (the negativity) is in this last case, internal. The idea, the vector of the structure of the original progression and the absolute logical determination develop through a completely actualized subject, being opposed to a reality that, apparently, is something different from what is an Idea. The Idea survives within Nature because the void and formal Absolute retrieves its own finality of the real and empirical process of the self-conscious Spirit, it extracts and follows the internal substance through the instances of Nature and Spirit.

Thenceforth, the Nature and the Spirit define themselves as moments of the actualization of the Idea, seen as an autonomous, self-determination of the Spirit itself, its development being teleologically accomplished when the Spirit appropriates the totality of its constitutive moments. In this sense, the becoming of the Idea in the space of Nature leaves a logical transition, compatible with a deductive dialectics, and it preserves the autonomy that determines the assumption of the Idea within a finite Form, an essential moment for acquiring the self-consciousness.

Secondly, a quantum interpretation of the philosophical hermeneutics, simultaneously logical and natural, involves an assumption on the Hegelian dialectics where the microphysics, as the model of the Kantian pure reason, would require the domain of the pure dynamic and antagonistic contradictions, a space where the transcendence represents a relative and paradoxical manner, because the actualization of a prime term would inhibit and virtualize the manifestation of a second one. This represents the mechanism through which the relative transcendence of the contradiction is built and manifested, without which no exponent of a reconciliatory synthesis can have validity: if the analysis presents itself as a contradictory and dynamic process in regard to synthesis, the dual functions of a quantum system, the wave and the particle, are reciprocally reduced to the quantifier level.¹⁹

In a probabilistic paradigm, Bachelard conceives the potentiality of such a metaphysics of the microphysic, quantum space through "the ontological mobility corresponding to the essentially probabilistic foundation of datum", "a connection where the operator, thought to be identical with itself (...) contributes to the elimination (...) of the irrational character of the probability"²⁰. In other words, the rational and the irrational manifest themselves on the territory of the

¹⁹ The evolution of the energy quantifier in a physical system is analysed by Louis de Broglie in *Théorie de la quantification dans la nouvelle mécanique*, Paris: Hermann, 1932.

²⁰ Gaston Bachelard, *L'expérience de l'espace dans la physique contemporaine*, Paris : Alcan, 1937, p. 102.

same antagonistic dualism of the logical character, cultivated by both classical metaphysics and modern microphysics (quantum physics), and, additionally, generated and determined by the multiplicity of the indeterminacy relations. In fact, this indeterminate conjunction or incomplete quantum measurement (EPR²¹) caused by the existence of a hidden variable, is built as the Hegelian Spirit, being incomplete until its fully actualization, reintegration and assumption, the variable becoming the metaphor of the evolution and dislocating, in the same time, the theory of the classical temporality: “the quantum postulate (...) states that any observation of the atomic phenomena involves a finite interaction with the observational instrument (...). On one hand, for defining the condition of a physical system according to the general conceptions, any exterior action must be ignored; though, in this case, following the quantum postulate, any possibility of observation is simultaneously excluded; first of all, the concepts of time and space lose their sense immediately. If, on the other hand, for making the observation possible, we admit the eventual interaction with proper observational instruments, which do not belong to the system, then an univocal definition of the condition of the system becomes impossible because the nature of these things, and any problem of causality, in the general sense of this term, is excluded. We should then conceive a radical modification of the relation between the spatio-temporal description and the principle of causality, signifying the ideal possibilities of observation and definition, whose unification is characteristic to the classical theories: according to the essence of quantum theory, their conceivability seen as some complementary aspects must be abandoned in the favour of a mutual and exclusive character.”²² So, in the context of a contradictory complementarity, the time and space become *a priori* intuitions of the observer’s (subject) sensibility, according to his own observational instruments. In a quantum dialectics, the equation generates a multiplicity of mundane potentialities and it introduces typical interpretations (for instance, the paradigm of the many-worlds interpretation²³, enunciated by Everett), because the space and time are not objective, but they belong to the subject’s consciousness.

²¹ The quantum Einstein-Podolsky-Rosen paradox analyses the dichotomy cultivated by the measurement and description of the microscopic systems (singular elements like photons, electrons and atoms) through the methods of the quantum mechanics. In this paradigm, the unit of measurement of a physical quantity of an individual system must influence the proportion and measurement of another physical quantity of a secondary system, spatially different, or, on the contrary, the description of the reality conferred by an undulatory function is incomplete.

²² Niels Bohr, *La Théorie atomique et la description des phénomènes*, Paris: Gauthier-Villars, 1932, pp. 51-52.

²³ The quantum interpretation of the multiple worlds asserts the objective reality of the universal undulatory function, denying though the actuality of the collapse of the undulatory function or its reduction. In other words, the theory implies that any historical alternative, past or future, is valid, because each of them represents an actual or, at least, possible and potential universe.

Next, Heisenberg indicates, through his uncertainty relations²⁴, that the rigorous observation of the coordinates localised in space and time presumes an uncertainty of the impulse-energy component, an unpredictable modification of the dynamic behaviour and a scission of the causality of the observed facts; conversely, the increased precision of the energy and quantity of movement or the causality of an atomic process involves the major uncertainty of its spatio-temporal aspect. These two proportions of the classical physical quanta present an incompatible microphysical character, and the attempt of simultaneously applying them to a singular object is opposed to the limit imposed by the acting quantifier (in Aristotelian terms, *energeia*).

Nevertheless, the integrity of the principle of non-contradiction is not abolished, because the two terms of this contradictory complementarity never actualize simultaneously, in an identical spatio-temporal domain. The reciprocal exclusion functions as a vector that avoids the contradiction presumed by such an actual coexistence, and Heisenberg demonstrates that, through the uncertainty relations, the undulatory and the corpuscular representations eliminate a conflictual participation²⁵: when the movement of a particle is already observed, the undulatory representation can be applied to it because the particle possesses a wave length, though through the existence of a multiplicity of possible, pure virtual positions the particle disappears, because the corpuscular representation is, in this case, incompatible; conversely, in the case of a geometrical figure or coordinated function, the associated wave is eluded, while its movement is restricted to a simple, infinite multiplicity of possible phenomena because, this time, the undulatory representation rejects the quantum reality and the corpuscular representation cannot be applied anymore. Definitely, Heisenberg considers that there is a complementary reality between the quantum concepts of wave and particle, the two elements reciprocally excluding each other though avoiding a contradictory tangent because their applicability is not simultaneously distributed.

Hence, the two elements are not heterogeneous, but their specific function of identification is always opposed to a contradictory duality whose antagonistic term realises the irrational and contrary character of the opponent term. In fact, the wave and particle are only microscopic notions that evolve, through individual paradigms, the conceptual rationality of the physical reality,

²⁴ In the quantum physics, the uncertainty principle enunciated by Heisenberg presents the existence of some rigorous inequalities which constraint specific couples of physical proprieties, like the measurement of a present position of a particle, made in the same time with the determination of the future position of the same particle. Consequently, these measurements cannot be simultaneous, and the rigorous measurement of a certain propriety is inversely proportional to the control, determination and knowledge of the other.

²⁵ Werner Heisenberg, *Les Principes physique de la théorie des quanta*, Paris : Gauthier-Villars, 1932, ch. II-III.

avoiding a direct contradiction of macrophysics because the movement and the causality cultivated by these ones represent a process of evolution or metaphysical becoming, a process of differentiation of the permanence and identity conferred by the spatiality of a physical being, so an actualization of the own potentialities, without transforming the substantial reality of that specific being: the movement constitutes a determined becoming of extrinsic modifications, and the causality postulates directly proportional relationships developed between cause and effect, despite the modal heterogeneity of the cause and effect. The spatial description shows the laws of the identity of the modal heterogeneity of the figure, while the causality regards the elements corresponding to the movement; therefore, the two theoretical representations display the same duality, having an identical transcendence and contradiction as a *telos*. The contradiction of the microphysics interfeares in this point because, in this space, the geometry is contradictorily connected to the dynamic field, through the acting quantifier, in the same way as, during the process of actualization of some immanent potentialities in subject through *energeia*, the resulted negativity undergoes the transcendental process of becoming, being assumed and overcome for obtaining the unity of the contraries. The two concepts are not contradictory in themselves, but the application of their logical identity (maintained through any dynamic and causal transformations) to the quantum experience requires an antagonistic dualism whom the macroscopic process transcends, through the finality. The irrational and the heterogeneous character of the dynamic activity (*energeia*) are opposed, in the microcosmos, to the geometric identity that overcomes the contradiction (the negativity) through the spatio-temporal description, while the circumstantial irrational and heterogeneity are opposed, in macrocosmos, to the dynamic identity (*energeia*) that transcends the contradiction (the negativity) through the logical causality and reason, the finality assisting to the complete actualization of the individual potentialities, in both cases.

As far as they are instrumented from this perspective, the uncertainty relations seem to represent a totally new and contrary theory: if each of the complementary terms is alternatively actualized within the microcosmos but simultaneously accomplished inside the macrocosmos, then this process involves, for both of them, the possibility of an ultimate contradiction, for whom any real experience becomes impossible because the human intellect cannot conceive a movement that excludes a physical object, a dynamic and pure character coexisting with a spatiality having an infinite heterogeneity of movements; however, in the end, even this potential contradiction is somehow avoided through the identity and the causality. In a Hegelian dialectics, the contradiction is solved by the reconciliation between essence and sensibility, in the context of an assumed and transcendental negativity of its own substance, Self-movement and totality in a space where the spatio-temporal relationships

are conjugated through subjectivity. In the same time, in Aristotelian metaphysical terms, the teleologic process overcomes the finite *nous* (the Intellect) and identifies its essence in the expression of *noêsis noêseôs*, the antecedent of the Absolute Spirit and the active substance of the Unmoved Mover, the pure existential space by excellence, where the Thought, the Intellect, the Movement and the Intelligibility are identical, eliminating any intrinsic contradiction or potentiality.

Finally, the complementarity that essentially exhibits a contradictory and uncertain duality requires a metaphysical transcendence where the antagonistic elements existing between the observer and the observed object, between the subject and the object or between the thought and the intellect are completely actualized in a hermeneutic unity, eliminating their negativity. Therefore, avoiding the reformulation of some new metaphysical images, imitating the realistic model and rejecting the classical, empirical, metaphysical paradigms, the case of the quantum physics intersects an authentic veracity through a philosophical synthesis of the metaphysical term.²⁶ This structure can include, in the end, Aristotelian, Kantian and Hegelian metaphysical arguments in a hermeneutic interpretation of the quantum theory: the paradoxes of the quantum mechanics (the contradictory complementarity of the wave and particle²⁷, the problem of the uncertainty relations²⁸, the theory of the multi-worlds²⁹, the problem of the incomplete quantum measurement³⁰) could identify their ontological and synallagmatic connections in the notion of *noêsis noêseôs* and in the expressions of the Transcendental Deduction and Absolute Spirit.

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²⁶ Hilary Putnam, "A Philosopher Looks at Quantum Mechanics (Again)", *British Journal for the Philosophy of Science*, 56 (2005), pp. 615-634. Tarja Kallio-Tamminem, *Quantum Metaphysics: The Role of Human Beings within the Paradigms of Classical and Quantum Physics*, Helsinki: University of Helsinki, 2004, pp. 215-287.

²⁷ The Copenhagen interpretation of the quantum mechanics postulates the dual existence of the matter, as a wave and particle, analysing the condition of each individual physical particle described through the coordinates of its wave function.

²⁸ The uncertainty principle enunciated by Heisenberg.

²⁹ The quantum interpretation of the many-worlds was asserted by Everett.

³⁰ EPR paradox or the Einstein-Podolsky-Rosen paradox analyses the dichotomy cultivated by the measurement and description of the microcopic systems.

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