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### Ricœur, Rawls and the Aporia of the Just

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## Ricoeur, Rawls and the aporia of the just

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### **Abstract**

The article conducts a comparative study between Ricoeur's and Rawls' thought on justice. Whereas Ricoeur focuses on the dialectic between the just and the good, Rawls is concerned with the ideal conditions under which a universal consensus on the principles of justice may be reached. Ricoeur gives much importance to reading Rawls. He offers many commentaries, especially on Rawls's major contribution, *A Theory of Justice*. This chapter focuses on such comments and on the relating paradoxical interpretation of Rawls's approach to justice Ricoeur provides. First, this chapter suggests that, with his interpretation of Rawls's major contribution, Ricoeur contributes to put the light on the conflicts between the just and the good. These conflicts are the key elements of what may be referred to as the aporia of the just, which consists in the contradictory requirements coming from the just considered as a virtue of either institutions or individuals. Second, this chapter shows that whereas the aporia is a major problem in Rawls' approach to justice, it is at the core of the dialectic dynamic Ricoeur sees within moral life. In his work, the aporia leads to what we call the three paradoxes of justice, which are the paradoxes with legal, distributive and political justice. Considering such paradoxes, Ricoeur takes the ethics of practical wisdom as a necessary recourse. The latter provides fair decision makers with the resources needed for the aporia to be, if not resolved, at least eased.

**Keywords:** social justice, distributive justice, legal justice, political justice, the just, the good, principles of justice, Kant, Aristotle, Ricoeur, Rawls, political paradox, sense of justice

As Ricœur acknowledges, the publication of Rawls' book, *A Theory of Justice* (*TJ*), in 1971 was a major event in the area of contemporary political philosophy. Ricœur offers important comments on Rawls's approach to justice. These commentaries are mainly based on a close reading of this book. This article focuses on such commentaries. They are at the same time glowing and critical. Ricœur expresses his support to Rawls for his illuminating study of justice, seen as a virtue of institutions. Indeed, in *TJ*, Rawls focuses on the two following questions. First, how can we identify the most basic universal standards and requirements concerning justice? Second, what formal expression can we find for such requirements? The fundamental issue at stake is the identification of the principles of just institutions: such principles are at the basis of the rule of law<sup>1</sup>. Ricœur agrees with Rawls that addressing such issues demand reference to both the deontological perspective on morals and the political tradition of the social contract. At the same time, Ricœur is uncomfortable with the pure and procedural approach of justice that Rawls supports. According to this approach, the characterisation of the just is meant to be independent from the definition of the good. Ricœur disagrees with this claim. He insists on the fact that justice does not refer primarily to the virtue of the institutions; rather, it refers first to an ethical desire. As Ricœur notes, this desire, which is commonly called "a sense of justice", expresses itself mostly negatively by means of a cry of indignation: "it's unfair!" In fact, this is what we experience, from our earliest age, when we feel indignant about outrage, poverty, discriminations, unequal treatments, etc. This sense of justice, or rather this sense of injustice, as Ricœur himself puts it, is very deep and precedes any demand or claim for justice. Ricœur argues that it is nonsense to deal with the idea of justice without any prior reference first to our common sense of injustice and second to the perspective toward the good on which it is based. Ricœur relies on his own ethical theory as developed in *Oneself as Another* to support this statement. Indeed, in his "little ethics"<sup>2</sup>, he explains that the just is embedded in the good. Finally, Ricœur finds some embarrassment when reading Rawls, but as I shall show, the solution he provides for minimizing this embarrassment is unsatisfactory. It is based on comments in relation to a so-called hidden and circular logic in Rawls' *A Theory of Justice*. My thesis is that in such puzzling comments, Ricœur puts the light on a basic contradiction inherent to the very idea of

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<sup>1</sup> The first question leads Rawls to his theory of fairness. The second one leads him to the characterisation of the two Rawlsian principles of justice.

<sup>2</sup> Ricœur, *Oneself as Another*, Studies 7 to 9.

justice. This contradiction we shall call the aporia of the just<sup>3</sup>. The aporia concerns the contradictory requirements coming from the just considered either as a virtue of institutions or as the object of an ethical desire. According to the first consideration, “the just looks to the legal side” (it is the property of a norm), whereas, according to the second consideration, “the just looks to the good’s side” (it concerns good decisions)<sup>4</sup>. The aporia results from the contradiction between the two underpinning logics: a deontological logic at the basis of the definition of the legal, and a teleological logic at the basis of the definition of the good. According to the deontological logic, justice is independent from the good, whereas, according to the teleological logic, justice depends on the good. Given that Ricœur identifies ethics as the pursuance of the good and morals as the submission to commandments, the terms of the aporia are the following:

- The necessity to consider the just as grounded in our prior convictions on the good, so that fair decisions are part of our living well together.
- The necessity to consider the norm of the just as independent from any prior conception of the good, so that it could be universalized and play its role as a moral filter.

Indeed, whatever Ricœur may say on the Rawlsian approach, the latter comes up against the aporia. This is not the case with Ricœur’s own approach. My statement is the following: while in Rawls’ approach, the aporia appears as a major problem, in Ricœur’s approach it appears as the solution to the enigma of our moral life. Indeed, I defend that the aporia gives rise in Ricœur’s approach to what might be referred to as the paradoxes of justice. These are based on the conflicting claims resulting from the just seen whether as a virtue of institutions or as a virtue of individuals, with their acts, their judgments and their interpersonal relations. Ricœur gives account of at least three paradoxes of justice: the paradox in legal justice, the paradox in distributive justice and the paradox in political justice. The dialectic between the just and the good such paradoxes are grounded in provides the ethical life its conflict dynamics. Finally, this is precisely because of the aporia of the just and

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<sup>3</sup> I use the word « aporia » in the broad sense Ricœur gives to it, namely an inner tension due to the very specificity of a given notion, a given theoretical construction or even a given practice. For example, in *Le juste, la justice et son échec*, Ricœur refers to the aporias inherent in the construction at the basis of criminal law (id. p. 44). He explains that such inner tensions are related to « the aporias of punishment » (id., p. 38).

<sup>4</sup> Ricœur, “Le juste, entre le légal et le bon,” 176ff.

the respective paradoxes of justice that the most important practice in moral life is, according to Ricœur, the exercise of practical wisdom.

The chapter is divided into five parts.

In the first part, I shall compare in very general terms Rawls and Ricœur's approaches to justice. In his moral theory, Ricœur argues for a dialectical conception of the just<sup>5</sup>. This conception is *a priori* in contradiction with the pure and procedural conception of justice that Rawls defends<sup>6</sup>. But at the same time, the Rawlsian project is, from a Ricœurian point of view, inescapable, since it clarifies one decisive component of the dialectic of the just, i.e., the normative one.

In the second part, I shall report on Ricœur's comments of embarrassment and his paradoxical interpretation of Rawls' book *A Theory of Justice* (*TJ*). I shall provide two kinds of evidence. First, Ricœur formulates a critique that is meant to be both internal and soft, by contrast with the radical critique of the communitarians; but, at the same time, he cannot help agreeing with the critical arguments of the communitarians. Second, he formulates a critique that is meant to be positive, putting the emphasis on a hidden and circular logic within *TJ*. But, if this critique is true, then the whole Rawlsian project collapses.

In the third part, I shall argue that Ricœur's embarrassed reading of *TJ* helps us bring out the aporia of justice. Such aporia relates to the contradictory requirements coming from the just considered either as a virtue of institutions or as a virtue of individuals. The contradictions arise at the very moment when the idea of justice moves from the ethical area of desires to the moral area of imperatives. I shall insist on the fact that, in Rawls' approach, the contradictions express themselves with great vigor, at least twice: first with respect to the discussion of the justification of the maximin principle, second with respect to the discussion of the role assigned to a reflective equilibrium.

Whereas the aporia undermines Rawls' project, I shall argue, in the fourth part of the chapter, that the aporia is at the core of Ricœur's dialectical conception of the just. I shall put the emphasis on what I call the paradoxes of justice, which the aporia leads to. Ricœur deals with three of them: first, the paradox in legal justice as based on the contradiction between legal coercion and ethical reconstruction; second, the paradox in distributive justice as based

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<sup>5</sup> Ricœur, *Oneself as Another*.

<sup>6</sup> Rawls, *A Theory of Justice*.

on the contradiction between universal principles of distributive justice and historical rules of distribution; third, the paradox in political justice as based on the contradiction between legitimacy and justice.

The fifth part of the chapter consists of concluding remarks. I shall stress that, in contrast to Rawls' approach, Ricœur's thought on justice is not a thought oriented toward consensus: it is a thought attending to conflict, which gives full range to the aporetical dimension of justice. As a consequence, Ricœur insists very much on the importance of the third level of our moral life, namely the level of practical wisdom, which goes beyond the ethical and the moral ones. With his analysis of practical wisdom, Ricœur enjoins us to consider the different resources, not only ethical but also supra-ethical and infra-ethical that are available to us and which help us try to transcend the aporia of justice provisionally, in the here and now.

### **1) Ricœur's dialectical approach to justice as contrasted with the Rawlsian pure and procedural approach**

#### **1.1) Ricœur's dialectical approach to justice**

In his little ethics, Ricœur argues for a dialectical approach to justice<sup>7</sup>. According to him, the idea of justice is not the same when it is considered from an ethical or from a moral point of view. From an ethical point of view, the idea of the just is linked to the good, while from a moral point of view, it is linked to the legal<sup>8</sup>. Indeed, in his own ethical theory, Ricœur makes the distinction between ethics and morals. This distinction is based on the fact that we have commonly two different attitudes towards the good, depending on whether we consider the good as the object of our deepest desires or as a source of obligation. Indeed, Ricœur characterises as ethical all aspects of human life (feelings, decisions, interactions, etc.) that are governed by the desire to live well. And he characterises as moral any rule of decision or norm of action that has the two following properties. First, it is an obligation, which means that the rule is the expression of an internal constraint and, second, the obligation is considered as universal. While ethical prescriptions are teleological, moral prescriptions are deontological. It is important to note that the difference Ricœur makes between ethics and morals is not an ideological one but a pragmatic one. With this distinction, his aim is to put the emphasis on the complex rationales that impact the course of our ethical life. He even

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<sup>7</sup> Ricœur, *Oneself as Another*, Studies 7 to 9.

<sup>8</sup> Ricœur, "Le juste, entre le légal et le bon."

goes further and says that we need to specify a third attitude towards the good. It consists in giving a concrete meaning, throughout our judgments and actions, to both our ethical aspirations and our moral obligations. This third attitude refers to a “practical wisdom”.

More generally, Ricœur proposes to define a two-dimensional coordinate system for guidance and orientation in our ethical life<sup>9</sup>. This system is based on two axes: one is horizontal and the other one is vertical. With the horizontal axis, the purpose is to deal with the following question: who is concerned with ethical life experiences? He distinguishes three cases: first, the case where those experiences concern the self considered as oneself; second, the case where they concern the self in relation to another self, in face-to-face interaction; third, the case where they affect the self in relation to many selves, these selves being anonymous. Ricœur raises the problem of where, on this horizontal axis, to place the idea of justice. This idea finds its most common expression in the following requirement: “to each her own”. This means first that justice relates to the self in her relationships with many other selves, and second that such relationships are placed under the requirement that everybody is treated equally. Ricœur then puts the emphasis on the institutional meaning of such a characterization of the idea of justice. This institutional meaning stands for the three main components of the idea of justice. First, the “everyone” component: problems of justice are raised when people ask themselves whether everyone is treated in a just way. Second, the “impartiality” component: in order to treat people in a just way, it is necessary to make interpersonal comparisons from an impartial point of view. Third, the “equality” component: justice refers to a criteria of equality, whether strict equality or proportional equality.

With the vertical axis, the purpose is to present the three levels of the ethical life as depending on our three different attitudes towards the good. The deepest and most basic level is the ethical one: it is about our valuation activities. The highest and most complex one is characterized by the exercise of practical wisdom: it is about judging in an appropriate way. The moral level is intermediate: it is about the rules and principles that must govern our lives. In *Oneself as Another*, Ricœur argues for the three following propositions:

- 1<sup>st</sup>) the primacy of ethics over morals
- 2<sup>nd</sup>) the necessity for the ethical aims to pass the sieve of moral norms

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<sup>9</sup> Ricœur, *The Just*, Preface.

3<sup>rd</sup>) the legitimacy of the recourse to an ethically-oriented concern when the enforcement of moral rules leads to practical deadlocks

Such propositions state for the vitality of our ethical life. Indeed, the idea of justice is present in our ethical life at all levels.

- 1) Within the ethical area, the idea of justice refers to our sense of justice and the many ways of experiencing it. Such desire is a guideline: it helps us build good relations with others.
- 2) Within the moral area, the idea of justice refers both to the moral imperatives and to the legal principles at the basis of the rule of law.
- 3) Within the area of practical wisdom, the idea of justice refers to equity. The latter is the virtue of a good judgment, i.e. a fair judgment that fits with the situation at hand.

The idea of justice goes throughout those different stages according to a dialectical progression. This dialectic, which gives our ethical life its dynamic, is due to the fact that the just is embedded in the good.

As a matter of fact, Ricœur says, in its broadest sense justice is the virtue of a social practice that consists in distributing all social goods and burdens in society according to requirement of equality. The idea refers then to some distributive rules and principles. Thus, in its broadest sense, the idea of justice takes place within the moral area.

However, Ricœur notes that the desire for justice is deeper than its procedures. Indeed, our concern for a fair distribution of goods comes from our desire for justice. As our concern for a fair distribution expresses itself throughout our legal and administrative practices, it does not exhaust the meaning of our sense of justice. For this desire is, in a larger sense, the expression of our “aiming at the good life, with and for others, in just institutions”. And, this sense of justice means more than caring for our institutional and administrative practices. It involves also caring for others, for us, and for the quality of our interpersonal relationships.

Yet, we all have various unlimited desires and conflicting interests. However deep our sense of justice may be, it cannot break the cycle of discord and violence that is due in society to many factors such as: the free expression of our passions, the fulfilment of our competing

interests, and above all, the basic dissymmetry inherent to any action<sup>10</sup>. To break such a cycle, we need moral norms, Ricœur says. They impose imperative constraints (obligations and bans) on our behaviors, so that altogether the expression of our passions, the satisfaction of our competing interests, and the exercise of power are under control. Such moral norms are at the basis of just institutions. These are the institutions whose principles are regarded by all as just.

Nevertheless, Ricœur adds, however legitimate the moral norms are, the meaning of our institutions depends on the way we embody their principles and enforce their rules. Indeed, in a given society, institutions are regarded as just, not because they are primarily based on a fair system of distribution rules but because, throughout the many varied uses of such rules, these institutions contribute to the good life in society. Indeed, our appreciation of the good life depends on our exercising our practical judgment in a wise way, i.e. according to our sense of injustice and in conformity with the moral norms of justice.

### **1.2) Rawls' pure and procedural approach on justice**

The dialectical conception of justice Ricœur defends is totally contrary to the approach Rawls argues for. Indeed, according to Rawls, the just must not depend on the good. The reason is that, in the present context of multicultural and multi-religious societies, people argue for very different and even competing conceptions of the good. In this context, it is therefore very difficult and even impossible to reach agreement on what the good is. If the just depended on the good, then similarly it would be impossible to reach agreement on what justice requires. We would be condemned to adopt a purely relativist approach to justice. Given this approach, the idea of justice would lose all its normative content: it would no longer be possible to make the link between the idea of justice and the unconditional requirements of impartiality and equality.

Indeed, in *A Theory of Justice*, Rawls' concern is about what the just means in itself, whatever conception of the good may be advocated. He focuses on the formal conditions under which, in a context of ethical pluralism, it is still meaningful to refer to a common requirement of justice. Thus, the issue he addresses is political. He asks whether, in the modern context of multicultural and multi-religious societies, a basic social agreement on what justice requires is at least possible among fellow citizens. The formalism of his approach

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<sup>10</sup> This basic dissymmetry is due to the fact that all action refers to an agent (whether individual or plural) and to the power this agent exercises over others.

is due to this very issue, which makes him put aside all aspects of justice with ethical overtones. His purpose is then to put the light on justice considered exclusively as a virtue of institutions and so not as a virtue of persons, of their judgments and their relationships. In Ricœur's lexicon, Rawls is concerned with the moral level, where the idea of justice refers to the rules and principles of distributive justice.

Following a long tradition in political philosophy, Rawls takes such principles of distributive justice as those that are at the basis of a just society, i.e. a society based on a fair system of social cooperation<sup>11</sup>. According to him, the general terms of social cooperation stand for the circumstances of justice. They are the following. Any social cooperation takes place in a context of resource scarcity. In such a context, the members of the cooperation have two types of interests: first, a superior interest in cooperation, for the better the cooperation, the bigger the produced amount of social goods; second, a personal interest in taking for herself the largest amount of social benefits and the smallest amount of social charges. How can we conceive of a fair system of cooperation in such circumstances? Such a system, Rawls replies, is based on the distributive principles that citizens, who want to live in a just society, would agree to unanimously<sup>12</sup>. Then, in order to identify the content of such principles, one needs to characterize the agreement procedure.

This procedure, Rawls says, gives rise to a collective decision. It cannot be based on ethical considerations, otherwise unanimity would not be guaranteed. Therefore, the agreement procedure can only be based on some purely formal requirement, which constrains the frame of the procedure itself. According to Rawls, the formal requirement is one of fairness. It consists of two imperatives. The first one is based on the requirement of impartiality and the second one on the requirement of equality. Indeed, in dealing with such issue, Rawls mixes two traditions: the Kantian tradition of morals and the political tradition of the social contract. Together with Kant, Rawls holds that the members of a fair cooperation are to consider themselves as free and equal, i.e. as autonomous selves, who can establish themselves, individually and collectively, by their own laws. And, together with the social

<sup>11</sup> He calls such a society a « well-ordered society ».

<sup>12</sup> In “John Rawls : de l'autonomie morale à la fiction du contrat social”, Ricœur sums up Rawls' argument by saying that, according to Rawls, « the Society is through and through a consensual-conflictual phenomenon » (*Lectures 1*, p.206). Even if its members do have competing personal interests, they have a common interest in sharing the goods produced by means of their cooperation. But « for the distribution rule to be set up, it is necessary that a consensus was reached, which concerns the arbitration processes between competing claims. » (id.)

contract theorists, Rawls considers that, as the just cannot be based on ethical considerations, it must be a property of the collective decision procedure. This is what Rawls means when arguing for the idea of “justice as fairness”: due to the fair terms of the contract, the agreed principles are recognized by the contractors as fair.

The analytic construction Rawls proposes for such a fair procedure of agreement is called the “original position”. The latter is specified as to meet the unanimity condition and the fairness requirements (impartiality and equality)<sup>13</sup>. Therefore, it is framed by three formal constraints. The first one is ignorance: the contractors are placed under a veil of ignorance so that their decision is not partial. Under this veil, the contractors know nothing about themselves; nor do they know about the characteristics of the society in which they live. But they know what the basic laws of human psychology are<sup>14</sup>. The second constraint is symmetry: the rational agents are placed in exactly the same situation of choice and are therefore treated equally. The third constraint is publicity: from this constraint it follows that every contractor is endowed with a veto power, so that unanimity is guaranteed. From these three conditions, it results that every rational contractor makes exactly the same rational decision. Rawls argues that the chosen principles read as follows:

- 1) Each person has an equal right to the most extensive scheme of equal basic liberties compatible with a similar scheme of liberties for all.
- 2) Social and economic inequalities are to meet two conditions: they must be
  - (a) to the greatest expected benefit of the least advantaged members of society (the maximin equity criterion) and (b) attached to offices and positions open to all under conditions of fair equality of opportunity<sup>15</sup>.

I shall not enter into the discussion of the reasons why these are the principles that are agreed in the original position. Yet one note should be made. Given that Rawls’ concern is about the principles at the basis of a just society, Ricœur (2001a) insists that the constructivist

<sup>13</sup> Rawls, “Fairness to Goodness,” 267.

<sup>14</sup> In particular, every contractor knows that, as an individual, she has to care for both her personal interests and her superior interest as defined previously. Besides, every contractor knows that, as a moral person, she is endowed with a conception of the good and with a sense of justice. But nobody knows what her own conception of the good is or what the real content of her interests are; nor does any one knows about one’s own sensitivities.

<sup>15</sup> Rawls assumes that the first of these principles takes priority over the second and that, within the latter, proposition (b), the equality of opportunity principle, takes priority over proposition (a), the maximin criterion otherwise called the difference principle. See Rawls, “Some reasons for the maximin criterion” (p.227).

approach of Rawls is relevant<sup>16</sup>. Indeed, according to Ricœur, it is necessary to take a constructive perspective, i.e. and abstract and formal one, in order to test the normativity of the requirement of justice. He writes: “Under the label of the norm, which is the premier class category from a deontological point of view, justice goes through the tests of universality and of formalising and abstract procedures.”<sup>17</sup> In other words, we need an abstract and formal procedure in order to universalize the idea of justice.

Rawls does characterize his approach as a Kantian form of constructivism<sup>18</sup>. As he explains in “Some reasons for the maximin criterion” (p. 227), the relating principles of justice are “defined as those that would be unanimously agreed to in an appropriate initial situation that is fair between individuals conceived as free and equal moral persons”<sup>19</sup>. Ricœur appreciates the coherence of the Rawlsian approach. It is due, Ricœur says, to the internal link between the deontological perspective and the contractualist procedure<sup>20</sup>. According to the former, the just is independent from the good. But, as Ricœur notes, it is precisely “it is the goal and function of a contractualist procedure to assure the primacy of the just over the good by substituting the very procedure of deliberation to any commitment concerning an alleged common good”<sup>21</sup>. As Ricœur explains, whereas Kant did presuppose this link but without justifying it, Rawls argues that it is based on the possibility of “a deontology without a transcendental foundation”<sup>22</sup>. It is the purpose of Rawls to deal with such a possibility and that is precisely what Ricœur at the same time supports and expresses reservations about.

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<sup>16</sup> According to Ricœur, the Rawlsian approach is constructivist in that it is based on the design of a purely abstract and formal decision procedure.

<sup>17</sup> Ricœur, “Justice and Truth.”

<sup>18</sup> Rawls, “Kantian Constructivism in Moral Theory.”

<sup>19</sup> The Kantian roots of Rawls’ theory are of two types. First, under the veil of ignorance procedure, the contractors are considered only as rational agents, with no other capacity than the one to make rational decisions. But they are the agents of a construction “that specifies a particular conception of the person” (Rawls, “Kantian constructivism in moral theory”, p. 304). Therefore the contractors are forced, by their position, to consider one another as free and equal. They are forced to respect one another and to exercise their autonomy both individually and collectively. Second, the choice in the original position is solemn, since it is made publicly and once and for all. It gives rise to a firm commitment towards the chosen principles. The latter are very similar to unconditional imperatives.

<sup>20</sup> Ricœur, “John Rawls : de l’autonomie morale à la fiction du contrat social,” 196–97.

<sup>21</sup> Ricœur, “Is a Purely Procedural Theory of Justice Possible?,” 37.

<sup>22</sup> Ricœur, 39.

## 2) Ricœur's embarrassed critique of Rawls' *A Theory of Justice*

### 2.1) The contractualist approach of justice at issue

Ricœur supports Rawls' project, which is “to provide a contractualist version of Kantian autonomy”<sup>23</sup>. But, at the same time, unlike Rawls, he refuses to go as far as to defend a pure and procedural theory of justice. That is the cause of his embarrassment. He tries to minimize it by presenting his criticism as a soft and internal one, by contrast with the radical critique of the communitarians. He even pretends to defend Rawls against himself by revealing the real significance of Rawls' book, *A Theory of Justice*. Yet, as we shall see in the two forthcoming sections, the arguments he provides for minimizing his embarrassment are unsatisfactory.

Ricœur is very sensitive to the fact that, thanks to Rawls' work, it is now possible to test the normativity of the requirement of justice. And he remains grateful to Rawls for having made clear that this test has to be established in the framework of both a deontological perspective and a contractualist procedure. Indeed, this procedure consists in « replacing the foundation problem with a question of mutual agreement »<sup>24</sup>. Therefore, Ricœur agrees with Rawls that, with this procedure, it is henceforth possible to break with the transcendental foundations of the Kantian perspective on morals. And, following Rawls, he considers that this break is needed in order to make the mentioned test as workable as possible<sup>25</sup>. Moreover, he agrees with Rawls that the fairness procedure made in view of a fair institutional arrangement has at least three advantages. The first one is methodological, the second one is moral, and the third one is political.

First, Ricœur recognizes that, from a methodological point of view, Rawls and the contractualist theoreticians have good reasons to define a human society as a system of cooperation. Thanks to this definition, human society can neither be reduced to a collection of individuals as is the case with methodological individualism, nor to a collection of constraining rules as is the case with methodological holism<sup>26</sup>. Rather, human society is considered as a vast system of allocation of shares among individuals, with them participating in this cooperation and taking their due part of the produced social goods and charges. In other words, with the definition of society as a system of cooperation, the emphasis is put on

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<sup>23</sup> Ricœur, 39.

<sup>24</sup> Ricœur, “Is a Purely Procedural Theory of Justice Possible?”

<sup>25</sup> Ricœur, “John Rawls : de l'autonomie morale à la fiction du contrat social,” 197ff.

<sup>26</sup> Ricœur, 206.

an articulation between the willingness of people and the institutional rules that govern their life.

Second, with the Rawlsian approach, it is now possible to refer to an empirical concept of autonomy “understood in the precise sense of autolegislation”<sup>27</sup>. In Rawls’ theory, the notion of autonomy refers to self-supplied rules that are agreed by the rational decision makers in the original position. In the latter, they are forced, by the situation in which they are placed, to consider themselves as free and equal. Therefore, the fiction of the original position plays the constraining role previously undertaken by the transcendental matter of reason in Kant’s morals<sup>28</sup>. Yet, as the fiction is not built on such an internal constraint, it is then possible to avoid the crucial problems with Kant’s morals (in particular the problem with the idea of a transcendental liberty), without giving up the political benefits of the idea of autonomy<sup>29</sup>.

Third, with the fairness procedure, it is easier to avoid either tyrannical or paternalistic reintroduction of some objective criterion of the good in the deliberation process about the rules of justice. As Ricœur concedes, “Basically, only a procedural justice can assure the coexistence of rival visions of the world, principally those centred on divergent ideas of the good, as affirmed [by Rawls] in the 1988 essay: ‘The Priority of Right and Ideas of the Good’”<sup>30</sup>. In the Rawlsian approach, the framing of the deliberation process is justified by referring to both the general terms of social cooperation and the circumstances of justice.

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<sup>27</sup> Ricœur, 196.

<sup>28</sup> Ricœur, 200–201.

<sup>29</sup> As Ricœur recalls in *Oneself as another* (Eighth Study), in Kant’s *Foundations of the Metaphysics of Morals*, the idea of autonomy is a complex one. It refers to the three formulations of the categorical imperative. The first formulation consists in the universalization maxim: autonomy refers then to the individual capacity to legislate freely. The second formulation consists in the respect due to oneself and the others: autonomy refers then to the mutual respect requirement. The third formulation consists in the idea of a kingdom of ends: autonomy refers then to the collective capacity to legislate freely. In Rawls’ theory of 1971, the construction of the original position is determined by this complex idea of autonomy, but understood as an empirical one. This idea refers to the capacity of the members of the social cooperation to set their own rules and to decide on their own organizational structures, considering themselves as free and equal. By contrast, for Kant, the idea of autonomy is transcendental. It is based on a transcendental notion of liberty. The liberty consists in the activity of a supposed pure will, one that is subtracted from any empirical fact, in particular from any desire, tendency or preference. In other words, the transcendental liberty is founded on a prior and synthetic link between liberty and law and this link takes place within a supposed pure and practical reason. This is not the case in Rawls’ approach.

<sup>30</sup> Ricœur, “After Rawls’s Theory of Justice,” 70.

Therefore, as Ricœur explains, “politics is set apart from these controversies [due to rival ideas of the good] through its withdrawal and abstraction”<sup>31</sup>.

Nevertheless, Ricœur claims that for the Rawlsian construction to be meaningful, it is necessary to refer to the exercise of a sense of justice. He writes: “a procedural conception of justice at best provides a rationalization of a sense of justice that is always presupposed”<sup>32</sup>. His thesis is that like any moral theory, the Rawlsian one “presents through its argumentation a circularity of a certain kind”<sup>33</sup>. As he explains, “a moral sense of justice founded on the Golden Rule -'Do not do unto others what you would not want to happen to you'- is always presupposed by a purely procedural justification of the principle of justice”<sup>34</sup>. In other words, according to Ricœur, contrary to what Rawls asserts, the Rawlsian approach is not purely procedural. It implicitly takes its roots in an ethical conception of the just. The latter is involved in the Golden Rule, which is, according to Ricœur, the formal expression for the ethical sense of justice.

Ricœur insists that his criticism must be considered as a soft one: “But we need to understand that this objection is not equivalent to a refutation of Rawls’s theory of justice, something that would lack interest and would even be ridiculous”<sup>35</sup>. Thus, Ricœur does not reject the constructivism of the Rawlsian approach. His objection applies only to the artificial trend of Rawls’ own comments. Instead of claiming for a pure and procedural approach, Ricœur says, Rawls should have insisted on the fact that the procedural argument cannot be, in the final instance, autonomous. He should have therefore present his theory as “an indirect plea in favor of the search for an ethical foundation for the concept of justice”<sup>36</sup>. To put it in another way, Ricœur aims to take Rawls’ theory as an element of his own dialectical conception of justice. At the same time, however, Ricœur is aware of the contradictions this interpretation leads to. These contradictions are the following. On the one hand, together with Rawls, Ricœur explains that the Rawlsian theory “posits the primacy of the just over the good”, which means that “It [the just] is not known in advance. It is supposed to result from deliberation in a condition of absolute fairness.”<sup>37</sup> Ricœur therefore claims that “Rawls’s

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<sup>31</sup> Ricœur, 71. Bracketed text is mine.

<sup>32</sup> Ricœur, “Is a Purely Procedural Theory of Justice Possible?,” 50.

<sup>33</sup> Ricœur, “Le cercle de la démonstration,” 217.

<sup>34</sup> Ricœur, “Is a Purely Procedural Theory of Justice Possible?,” 37.

<sup>35</sup> Ricœur, 38.

<sup>36</sup> Ricœur, 38.

<sup>37</sup> Ricœur, 40. Bracketed text is mine.

theory of justice is undoubtedly deontological". He notes that the "revival of the contractualist tradition assures this primacy"<sup>38</sup> and that, due to political reasons, this revival is a necessity. On the other hand, Ricœur argues that the just cannot be engendered by purely procedural means and that the revival of the contractualist theory must be therefore considered from the point of view of a teleological conception of the just. According to the latter, the just is subordinated to the good. But, as Ricœur states, "When the just is subordinated to the good, it has to be discovered"<sup>39</sup>, which means that it cannot be engendered by purely procedural means.

This is clearly puzzling for Ricœur as well as for his reader. In order to show how difficult the trouble can be, I shall deal with two kinds of evidence. The first one relates to Ricœur's paradoxical comments on the communitarian critique of the Rawlsian theory; the second one is about the claimed circular logic within Rawls' approach.

## 2.2) In favor of both Walzer and Rawls

### 2.2.1) About the original position

As Ricœur explains<sup>40</sup>, the main critique the communitarians address to Rawls is the following: how can ahistorical pact, such as the one established in the original position under the veil of ignorance, bind a historical society? Ricœur agrees with this critique, which is about the artificiality of the contractualist tradition. As he explains<sup>41</sup>, the latter is based on the idea of a self-foundation of the political body. The just is not known in advance; it is built by means of a thought experiment. But, together with the communitarians such as Sandel and Walzer, Ricœur asks what is the legitimacy of the principles that are agreed to within the framework of a fictive and original contract. According to Ricœur, this very issue is a major difficulty for the whole contractualist tradition. The reason is that the aim of such tradition is precisely to break with the "circularity between concrete practices and politics"<sup>42</sup>. In his papers on political philosophy, Ricœur puts forward at least two arguments in favor of such a circularity. The first argument is anthropological. Like the communitarians, he objects to the "atomism" of the contractualist approach, including the Rawlsian one. Following Charles

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<sup>38</sup> Ricœur, 38.

<sup>39</sup> Ricœur, 40.

<sup>40</sup> Ricœur, "After Rawls's Theory of Justice," 67.

<sup>41</sup> Ricœur, "John Rawls : de l'autonomie morale à la fiction du contrat social," 213.

<sup>42</sup> Ricœur, "Langage politique et rhétorique," 162.

Taylor<sup>43</sup>, he insists on the fact that human beings cannot be considered as separated monads. The way they live depends on their belonging to various communities, but also on their being always already engaged in relationships of mutual indebtedness and reciprocal obligations. Thus, such relationships are issues that should matter. The second argument is political. It is about political legitimacy and authority. Ricœur claims that contractualist theoreticians, such as Rawls care only about one type of political legitimacy: the political legitimacy resulting from the authority of reason<sup>44</sup>. But, Ricœur says, there is a second type of political legitimacy: the one coming from the authority of both the traditions and the myths of the origins. Ricœur notes that no power can be stable and durable unless it is based on the two types of authority. The authority of both the traditions and the myths of the origins is due to the exercise of the symbolic power of speech, as embodied in narratives. The authority of reason is due to the exercise of the constraining power of rules, as embodied in institutions. The contractualist approach, Ricœur says, gives life to the ideal of the Enlightenment philosophers, which is to consider political legitimacy as rooted exclusively in the authority of reason. Yet, in “The Paradox of Authority”, Ricœur notes that the French Revolution tested the difficulty and even the impossibility of grounding the social contract in history. He concludes that it is one thing to legitimate the principle of a fictive and original contract, and it is another one to ground this legitimacy in facts<sup>45</sup>.

However, Ricœur recognizes that it is only from a fictive point of view that it is possible to dramatize the foundational act of a State. And this fictive play makes sense for at least two reasons. First, it makes the invisible visible. The invisible relates to what is most basic in society, namely the “power-in-common”: this is the power of the members of the society considered as partners of a cooperative venture, them wanting to live and act together. Following Arendt, Ricœur explains “that this stratum of power characterised by plurality and action in concert<sup>46</sup> is ordinary *invisible*, because it is so extensively covered over by relations of domination and that it is brought to light only when it is about to be destroyed.”<sup>47</sup> As this power-in-common is the source of our living together, it is sovereign. The contractualist approach then has the merit of deconstructing the given stratum of power and to delineate the

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<sup>43</sup> Taylor, *Multiculturalism*.

<sup>44</sup> Ricœur, “The Paradox of Authority.”

<sup>45</sup> Ricœur, 196–97.

<sup>46</sup> Ricœur uses the French term « concertation ». It refers to collective decision processes that are based on dialogue and a mutual concern for the common good (i.e. for the wellbeing of all people concerned by the considered decision).

<sup>47</sup> Ricœur, *Oneself as Another*.

possibility conditions under which, within the framework of a State, the power-in-common can exercise itself plainly and lead to a genuine “acting together.” Indeed, Ricœur adds, in order to adopt a critical perspective on the justice or injustice of different inherited institutions, it is necessary to go back to this invisible stratum of the “power-in-common” and to refer to its absolute sovereignty.

Finally, it is obvious that Ricoeur feels quite embarrassed with the contractualist approach of Rawls: he claims that this approach is socially meaningless though he concedes that it is theoretically inescapable. Ricœur tries to minimize his embarrassment by making a distinction between constructivism and artificialism. Artificialism refers to Rawls' interpretation of his theory as being a pure and procedural approach of justice while constructivism refers to Ricoeur's own interpretation. According to the latter, the contractualist procedure of Rawls is embedded in a larger approach where the just cannot be separated from the good. But given this priority of the good over the just, is it still very relevant to talk of a contractualist procedure?

### **2.2.2) About the primary goods**

The second source of embarrassment is in the way Ricœur deals with the Rawlsian conception of primary goods. According to Rawls, in the original position, the contractors are to class alternative systems of social distribution, the latter being defined on primary goods. These are the goods that the agents under the veil of ignorance consider as necessary, whatever their position in society or their final ends. The list of primary goods in *TJ* is the following: rights, liberties, and opportunities, income and wealth, and the social basis of self-respect. In his critical comments, Ricœur agrees with Walzer<sup>48</sup> that, in real life, first, the list of social goods is much larger<sup>49</sup>, and second, both their meaning and their relative importance is open to discussion and even to disputes. Like Walzer, Ricœur makes the following objection to Rawls: if society is a consensual-conflictual phenomenon, it is, first of all, because people can agree neither on the meaning of their social goods, nor on the relative

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<sup>48</sup> Walzer, *Spheres of justice*.

<sup>49</sup> Ricœur explains, « the list of social goods is long and open-ended, as soon as one takes into account the amplitude of shared symbolisms [their social meanings], the internal logic of the goods considered [the specific ways in which each of these good is either produced or exchanged or consumed], and above all the delimitation that results from their spheres of validity [the reasons for their promotion]. Who can deny that kinship, marriage, and the equality of the sexes pose questions of distribution? ” (“The Plurality of Instances of Justice”, p.79). Bracketed text is mine.

priority of each of them. Therefore, Ricœur agrees with Walzer that, in the circumstances of justice, the plurality and heterogeneity of social goods are key determinants. They are both the objects of competing understandings and conflicting valuations. Indeed, Ricœur welcomes Walzer's critique that, in Rawls' theory, "due to the formalism of the contract, the result is to neutralize the effects of the plurality of goods, to the benefit of the distribution rule"<sup>50</sup>. In other words, "according to Rawls, the emphasis must be put on the distribution rule itself rather than on the meaning of the social goods to distribute"<sup>51</sup>. Yet, as Ricœur, together with Walzer, points out, the problem of how to characterize and to compare the social goods that are to be fairly distributed is logically prior to the problem of which rule of distributive justice is to be agreed to. Therefore, the just cannot be considered as independent from the good.

This finding suggests that Ricœur is on Walzer's side rather than on Rawls'. Ricœur recalls that Walzer, in *Spheres of Justice*, takes an approach of justice that differs radically from the Rawlsian one<sup>52</sup>. Walzer argues in favor of a complex equality as applied to the distribution of a large range of both heterogeneous and incommensurable social goods. His approach consists in putting the emphasis on the plurality of the instances of justice, as being related to a variety of spheres of justice. Each sphere deals with the conditions for a fair distribution of a given social good. However, Ricœur, in "The Plurality of Instances of Justice" makes the following comment: when Walzer argues for a pluralization of the instances of social justice, he contributes, at the same time, to dismember the unitary idea of justice and therefore to undermine the unity of the political body. Ricœur wonders then how "the unitary ground of the political body", could be reintegrated in such a pluralistic theory<sup>53</sup>. In other words, what are the theoretical resources for a reunification of the rule of law? This question is, according to Ricœur, the blind spot of the pluralistic theories of justice such as Walzer's<sup>54</sup>.

As an illustration, Ricœur points to the ambiguity with which Walzer deals with political power in *Spheres of Justice*. First, Walzer regards political power as "a one good among goods."<sup>55</sup> He identifies the corresponding sphere of justice as the one that deals with the conditions for a fair distribution of political power. The issues at stake are the exercise of

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<sup>50</sup> Ricœur, "John Rawls : de l'autonomie morale à la fiction du contrat social," 206.

<sup>51</sup> Ricœur, 206.

<sup>52</sup> Ricœur, "The Plurality of Instances of Justice."

<sup>53</sup> Ricœur, 89.

<sup>54</sup> As another example of such theories, Ricœur (1995c) cites Boltanski and Thévenot (1991).

<sup>55</sup> Ricœur, "The Plurality of Instances of Justice," 80.

sovereignty and the development of public action. Yet, as Ricœur notes, Walzer offers no formal characterization of the State in this sphere. Second, Walzer argues that while exercising their political power, the aim of the policy-makers is to guarantee that there is no prominence of one given social good over the others, and no invasion of one given sphere of justice over the others. However, as Ricœur points out, Walzer himself stresses the fact that “the most important peril for our societies comes from the coalition between property as power over things and political power as exercised over human beings.”<sup>56</sup> Then, Ricœur concludes, it makes sense that a reader of Walzer should be worried about Walzer’s understanding of political power. He says “Still the reader cannot fail to wonder: is political power a good like all the others?”<sup>57</sup> Unlike Walzer, he insists that the problem with political power is very specific: it is about the conditions for a self-limitation of the political power, such conditions being at the basis of the collective autonomy of a given people.

This new finding suggests that Ricœur is on Rawls’ side rather than on Walzer’s one. Ricœur recalls that according to Rawls, the emphasis must not be put on the plurality of given social goods, otherwise it would be impossible to trace back to the original source of the power-in-common and to the possibility conditions of social cooperation.

Again, Ricœur is grateful to Rawls for the fact that he, unlike Walzer, does focus together on the problem of the unity and the original power of the political body, them both being at the basis of the rule of law. Yet, at the same time, Ricœur is embarrassed with the price to be paid for this focus. The price consists in ignoring, for theoretical purposes, all that makes social life meaningful. But as Ricœur, together with Charles Taylor<sup>58</sup> relates, ethical judgments and feelings about the value of the goods to be produced and shared are in the core of our living together<sup>59</sup>. In other words, ethical issues cannot be ignored for our main concern as human beings is not only to live together but more fundamentally to live *well* together.

Finally, in comparison with the comments Ricœur makes on Walzer’s *Spheres of Justice*, his comments on *TJ* seem to be at the same time critical and glowing. As he himself explains, the source of the difficulty while confronting Rawls’ and Walzer’s approaches is due to “the political paradox, namely that politics seems both to constitute of

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<sup>56</sup> Ricœur, 81.

<sup>57</sup> Ricœur, 81.

<sup>58</sup> Taylor, *Sources of the self*.

<sup>59</sup> Ricœur, “The Fundamental and the Historical: Notes on Charles Taylor’s Sources of the Self.”

one sphere of justice among others and to be envelop of the other spheres.”<sup>60</sup> In other words, according to Ricœur, Walzer and Rawls are both right, but for conflicting reasons. These are illustrative of the paradox with the very nature of the political power. On the one side, the horizontal dimension of the power in common is at the basis of the autonomy of the political sphere. The latter is constituted in itself with no other source of legitimacy than the will of the people. Yet, on the other side, the exercise of political power is based on a vertical structure, which implies a basic dissymmetry. This latter conflicts with the exercise of the power-in-common. Given this paradox<sup>61</sup>, the main question is the following: how deal with the political power arising from social cooperation? This is the final question Ricœur addresses to both Rawls and Walzer. He stresses that “A political philosophy constructed entirely around the theme of the heterogeneity of social goods is poorly armed to pose the problem of the self-constitution of the political body along with the connected problems of its self-limitation.”<sup>62</sup> Yet, a political philosophy based on a pure and procedural approach of justice is also, according to Ricœur, unsatisfactory. The reason is that this approach is based on “a *complete* disjunction between this structure [the main institutions of a well-ordered society as based on the principles of justice] and the particular institutions that are effectively tributary to this heterogeneity of goods and their corresponding evaluations.”<sup>63</sup> Ricœur suggests that Rawls could help us get out of this puzzling issue, provided that his theory was reinterpreted in a less procedural way. Here comes the circularity argument<sup>64</sup>.

### **2.3) In favor of both the circular logic and the contractualist approach**

According to Ricœur, when the Rawlsian theory is correctly interpreted, it gives support to Ricœur’s own approach to justice, which is based on the idea that the just is embedded in the good. Ricœur’s point is that this very idea is implicit in the core of *TJ*. Ricœur’s thesis is that the whole book is based on a hidden logic that is circular rather than linear<sup>65</sup>. He puts forward three arguments in favor of such circularity.

The first argument concerns the “ordering of reasons”, i.e. the sequence within which the main propositions and results are presented and discussed in *TJ*. The fact is that Rawls

<sup>60</sup> Ricœur, “The Plurality of Instances of Justice,” 81.

<sup>61</sup> For further comments on the political paradox Ricœur elaborates on, see Padis, “À La Poursuite Du Paradoxe Politique.”

<sup>62</sup> Ricœur, “The Plurality of Instances of Justice,” 89–90.

<sup>63</sup> Ricœur, “After Rawls’s Theory of Justice,” 67. Bracketed text is mine.

<sup>64</sup> Ricœur, “John Rawls : de l’autonomie morale à la fiction du contrat social,” 215–16.

<sup>65</sup> Ricœur, “Le cercle de la démonstration.”

introduces the principles of justice before his discussion about the best way to proceed with social justice issues. Therefore, Ricœur says, the theory is, from the beginning of the book, considered as a whole, aside from any serial order. Yet, this formal argument of Ricœur is not very persuasive. Indeed, Rawls makes it clear that it is only for didactic reasons that he defines the two principles in the first instance, before dealing with the procedural argument. The first characterization of the principles (before dealing with the original position) is exploratory while the second characterization (after the description of the original position) is definitive.

The second argument in favor of the circular logic Ricœur proposes concerns the model of the original position. According to Ricœur, the construction of this model is not purely procedural but proceeds from the exercise of our common sense of justice. The latter relates to our desire of a good life “for and with others”. Indeed, for Ricœur, there are at least two moments in the construction of the original position model of Rawls when the exercise of our common sense of justice is required<sup>66</sup>.

The first moment is when dealing with the formal constraints in the original position. According to Ricœur, Rawls needs to refer to our common intuitive idea of fairness, before he enters into the discussion about the model design. However, this argument of Ricœur is disputable since it is based on confusion between the moral requirement of justice and the ethical sense of justice. Indeed, Ricœur himself explains that, in the original position, the idea of fairness “works like the transcendental condition for all of the procedural development.”<sup>67</sup> This transcendental condition relates to fairness considered as a moral device, namely a device based on the requirement to treat people, whatever their own projects of life, impartially and equally. Accordingly, the fairness condition applies to the institutional design, at the level where people are anonymous. It is fully independent from the concern for others one can experience in one’s own life. It is also independent from the ethical desire of good relationships with one another that one can feel in one’s own life.

According to Ricœur, the reference to our common sense of justice is again needed in the original position model when dealing with the maximin criterion. Ricœur insists that the

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<sup>66</sup> Rawls himself considers the partners in the original position as having a sense of justice. Yet, his characterization of such a sense is very different from the Ricœurian one. The sense of justice he refers to is a purely formal one, with no direct link to the desire of the good. He defines it as “the capacity to understand, to apply and to act from (and not merely in accordance with) the principles of justice” (“Kantian constructivism in moral theory”, p. 312).

<sup>67</sup> Ricœur, “Is a Purely Procedural Theory of Justice Possible?,” 52.

argument in favor of such a criterion takes its roots in the conviction that it would be bad to accept that the lives of innocents may be sacrificed for the happiness of all. In other words, according to Ricœur, the reason for the partners to choose the maximin criterion comes from their desire of a good life with and for others. Ricœur’s argument seems all the more robust in that the rejection of the sacrificial logic is at the core of the critique Rawls addresses to utilitarianism<sup>68</sup>.

The third argument in favor of the circular logic concerns the Rawlsian idea of a “reflective equilibrium”. The latter consists in a process of mutual adjustment between our rational judgments and our ethical convictions so that our revised judgments and our revised convictions could both fit into one coherent scheme, namely the scheme proposed by the theory. As Ricœur explains the Rawlsian notion of *considered convictions* that is present in *TJ*<sup>69</sup> “sums up the whole preunderstanding that Rawls calls “intuitive,” namely, those moral judgments in which we have the greatest confidence.”<sup>70</sup> This intuitive preunderstanding results from the exercise of our most intimate sense of justice. Here again, Ricœur’s argument in favor of a circular logic in *TJ* seems robust as “the whole apparatus of argumentation can be considered a progressive rationalization of these convictions, once they are infected by prejudices or weakened by doubts.”<sup>71</sup> As Ricœur notes, “Rawls’s whole book can be thus considered as the search for this reflective equilibrium.”<sup>72</sup>

It is important to note that, if Ricœur’s claim about the circular logic in Rawls’ approach is true, then the procedural project of Rawls collapses. Indeed, if the foundations of the rule of law are to be found in the exercise of our common sense of justice rather than in some rational and autonomous argument, then the contractualist approach loses its relevance, as Ricœur himself acknowledges.<sup>73</sup> To sum up, in his comments on *TJ*, Ricœur aims to show that rational arguments cannot be substituted for prior convictions thanks to the invention of a

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<sup>68</sup> As Ricœur sums up (1995a, p. 92), “according to the sacrificial principle, some people are treated as means and not as ends with regard to the alleged good of the whole”. See Dupuy (1992).

<sup>69</sup> Rawls, *A Theory of Justice*, 19.

<sup>70</sup> Ricœur, “Is a Purely Procedural Theory of Justice Possible?”, 53.

<sup>71</sup> Ricœur, 55.

<sup>72</sup> Ricœur, *ibid.*

<sup>73</sup> Ricœur writes: “My objection seems to challenge the whole contractualist school, for which the procedural dimension must be independent of any presupposition concerning the good in a teleological approach to the concept of justice or even concerning the just in a transcendental version of deontology.” (Ricœur, 51-52)

hypothetical situation of deliberation.<sup>74</sup> Yet, not only does this conclusion conflict with Rawls's defence of a purely procedural approach to justice, but it actually conflicts with the distinction Ricœur makes in his own approach between the ethical and the moral contents of the idea of justice. Remember that, given this distinction, Ricœur argued, against Walzer and the communitarians, in favor of the contractualist approach of Rawls. The trouble Ricœur causes to his reader because of his paradoxical comments on *TJ* is now coupled with the trouble that Ricœur causes to his reader with his own approach.

In the next section, I shall discuss Ricœur's claims in favor of both the contractualist approach and the circular logic in Rawls' theory. My argument is the following: with such paradoxical claims, Ricœur contributes *indirectly* to illuminate the way the aporia of the just appears in Rawls' theory<sup>75</sup>.

### 3) The aporia of the just

The analysis of the just that Ricœur provides in his “little ethics”<sup>76</sup> constitutes the background of his comments on Rawls. Let us recall the difference Ricœur makes between the just considered from an ethical point of view (justice relates then to the sense of justice and the desire to live a good life with and for others) and the just considered from a moral point of view (justice refers then to the rules and principles at the basis of just institutions). Together with Rawls, Ricœur points out that the moral point of view merges with a constructivist approach to justice, as based on a deontological and contractualist conception of the norm. According to this conception, the just is defined independently of the good, as Kant in his moral philosophy, defends. Together with the communitarians, Ricœur insists that the ethical point of view merges with a contextual approach to justice, namely one that takes its roots in the lived experiences of violence and injustice. This contextual approach is based on a teleological conception of the just. According to this approach, the just depends on the good, as Aristotle, in his virtue ethics, defends.

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<sup>74</sup> He says: “For my part, I will say that it is our preunderstanding of the unjust and the just that assures the deontological intention of the self-proclaimed autonomous argument, including the maximin rule.” (Ricœur, 56)

<sup>75</sup> This contribution of Ricœur is implicit since, in his comments on Rawls, Ricœur says nothing explicit about the aporia of the just. He talks only about the « ambiguity » of Rawls's project (see Ricœur, 56). Such an “ambiguity has to do, he says, with the role of rational arguments in ethics.” (Ricœur, p.56)

<sup>76</sup> Ricœur, *Oneself as Another*.

It is commonly the case with most moral philosophers to insist on the differences between the Kantian conception of the just and the Aristotelian one. But Ricœur's purpose, in his comments on Rawls, is to insist on their complementarity. Indeed, he takes Rawls' theory as evidence of such complementarity. That is why he insists so much on the circularity logic: on the one hand, in order to remedy our lack of confidence concerning our convictions about what is fair and what is not, we need to make judgments as based on rational arguments. On the other hand, such rational arguments cannot be a substitute for our ethical convictions. My thesis is that Ricœur's argument contributes to highlight, despite himself, the irremediable contradiction rather than the complementarity between the deontological conception of the just and the teleological one. This contradiction is at the core of what might be referred to as the aporia of the just. The aporia is the following:

- On the one hand, the condition for the norm to be, in principle, *acceptable* is that it is universalizable, and therefore independent from our convictions. If that is not the case, the norm cannot play the role of a filter vis-à-vis our conflicting convictions and competing interests.
- On the other hand, the norm of the just cannot be *agreed* to unless it is rooted in our most intimate convictions of the good. If that is not the case, the norm is senseless, i.e. it loses its common meaning as a moral guide and as a criterion of moral decision.

Indeed, such aporia refers to the contradictory requirements coming from the just considered either as a virtue of institutions or as a virtue of individuals. The contradiction arises at the very moment when the idea of justice moves from the ethical area of desires to the moral area of imperatives. I argue that, contrary to what Ricœur claims, Rawls cannot escape this aporia, either in *TJ*, or in his latest book on *Political Liberalism*.

### **3.1.1) The aporia in Rawls' approach to justice**

In this section, I continue the discussion of Ricœur on the reasons for the maximin criterion. My aim is to show that the justification problems it raises derive from the aporia of the just.

According to Rawls<sup>77</sup>, in the original position the partners make their rational choice between different alternative principles of justice, including the utilitarian one. Due to the veil

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<sup>77</sup> Rawls, *A Theory of Justice*.

of ignorance, their choice is under complete uncertainty. In this situation, Rawls says, the partners will choose the two principles of justice mentioned earlier<sup>78</sup>. Following Rawls and his commentators, Ricœur draws particular attention to the second part of the second principle, i.e. the maximin criterion. As he sums up, this principle is “the anti-utilitarian point of the Rawlsian theory of justice.”<sup>79</sup>

Rawls provides many arguments in favor of the maximin criterion. The most important one comes from decision theory.<sup>80</sup> Under the veil of ignorance, the partners know neither who they are, nor which position they occupy in society. In this situation of radical uncertainty, Rawls says<sup>81</sup>, the partners cannot make any expected utility calculation. Given that their choice is both rational and solemn<sup>82</sup>, they can only decide in a prudent way. It comes, Rawls adds, that they cannot accept living in a society where the effect of the inequalities, including the effects on the life opportunities of the most disadvantaged members of the society, are, by principle, ignored. Therefore, Rawls concludes, the partners prioritize a system of principles of distributive justice where the inequalities are not ignored but allowed, provided that they are to the benefits of the worst off. Ricœur rightly points out that something is missing in this reasoning. Actually, Rawls’ reasoning can very easily be interpreted in a welfarist manner. According to the latter, the rational choice of the partners in the original position results from a strategic calculation where everybody tries to minimize the possible welfare losses for her and her descendants. The choice of the maximin criterion consists then in giving, for strategic reasons, an infinite weight to the welfare of the worst off. Ricœur rightly concludes that if the maximin criterion is to play its role as an anti-utilitarian principle, then an additional argument is needed<sup>83</sup>.

The problem is about the nature of this complementary and hidden argument.

<sup>78</sup> See § 1.2.

<sup>79</sup> Ricœur, “After Rawls’s Theory of Justice,” 65.

<sup>80</sup> This is the reason why Rawls, in 1971, presented his theory of justice as connected to a broader approach, which is decision theory (Rawls, *A Theory of Justice*, I,1,§4 ).

<sup>81</sup> Rawls, “Some Reasons for the Maximin Criterion.”

<sup>82</sup> The choice is solemn since it is made once and for all. It involves a binding commitment to the chosen principles. This commitment engages the partners of the original position but also all their descendants.

<sup>83</sup> The utilitarian principle is a welfarist one. According to welfarianism, the good is defined in terms of welfare. Social welfare results from the weighted sum of the individual welfares. According to utilitarianism, the weights have to be equal.

According to Ricœur, the missing argument is ethical. It has to do with “our intuitive understanding of what is unfair and of what is fair”<sup>84</sup>. Indeed, Ricœur says, Rawls’ reasoning is based on the fact that the partners are sensitive to social inequalities. This means that not only do they have a sense of justice (which Rawls would not deny<sup>85</sup>), but that they make their choice according to the ethical desire that such a sense is the expression of. Ricœur concludes that there is a necessary connection between the desire of a good life with and for others and the maximin criterion. He claims that this connection can be easily made by reference to the Golden Rule, which is a formal expression of our desire to live a good life with and for others<sup>86</sup>. More precisely, the Golden Rule refers to the norm of reciprocity as supported by the desire to live well with others.<sup>87</sup> Nevertheless, it is important to note that Harsanyi proposed an alternative model of decision under the veil of ignorance, which is explicitly based on the Golden Rule. This is the model of the impartial observer.<sup>88</sup> Harsanyi takes the Golden Rule as imposing the following hypothetical imperative to the partners under the veil of ignorance. If you want to live a good life, then “whatever you want men to do to you, do also to them.”<sup>89</sup> But what do I want men to do to me, Harsanyi asks. I want them to consider my desires and wants. Therefore, Harsanyi says, the Golden Rule requires that people’s desires and wants are given equal consideration. Accordingly, he argues that the partners’ choice in the original position is utilitarian. I shall not enter into the debate about Harsanyi’s model<sup>90</sup> (for such a discussion, see Gajdos & Kandil (2008) and Kandil (2014)). However, it is clear, as Ricœur acknowledges,<sup>91</sup> that introducing the Golden Rule into the original position model involves both the reference to well being and the comparisons between the others’ own good and mine. The arising question is: how to make such comparisons? As Harsanyi points out, utilitarianism provides one possible solution.

Thus, as I argued elsewhere<sup>92</sup>, the unique chance for Rawls to escape the utilitarian solution is not to introduce the Golden Rule in the original position model, but to insist on the

<sup>84</sup> Ricœur, “John Rawls : de l’autonomie morale à la fiction du contrat social,” 208.

<sup>85</sup> See footnote 18.

<sup>86</sup> See §2.1.

<sup>87</sup> Ricœur, *Oneself as Another*, 219 ff.

<sup>88</sup> Harsanyi, “Cardinal Utility in Welfare Economics and in the Theory of Risk-Taking”; Harsanyi, “Morality and the Theory of Rational Behavior.”

<sup>89</sup> Harsanyi, “Ethics in Terms of Hypothetical Imperatives.”

<sup>90</sup> For such a discussion, see Gajdos and Kandil, “The Ignorant Observer”; Kandil, “La Justice Est Aveugle. Rawls, Harsanyi et Le Voile d’ignorance.”

<sup>91</sup> Ricœur, “Is a Purely Procedural Theory of Justice Possible?,” 53.

<sup>92</sup> Kandil, *Fondements de La Justice de Feriel Kandil*.

Kantian meaning of this model. This is what he did in the first place. In *TJ* (II, 4, §40), as well as in later articles<sup>93</sup>, Rawls puts the emphasis on the “Kantian interpretation” of the original position model. His argument is that the partners under the veil of ignorance are moral persons: they consider themselves as free and equal, deserving equal respect with each other. Yet, by insisting too much on such a Kantian meaning, Rawls takes, from his own point of view, excessive risks. First, there is a danger of succumbing to the Kantian dualisms he wanted to escape.<sup>94</sup> Second, there is a danger of waiving the axiological neutrality of his approach. This is why he finally opts for a political turn in *Political Liberalism*.

In brief, while dealing with the reasons for the maximin, Rawls faces the following aporia.

- Either, the reasons for the maximin criterion are independent of any previous conception of the good. They take their roots in a Kantian conception of morals. This solution poses the problem of the axiological neutrality of the theory. Therefore, in view of the Rawlsian project, the coherence of such a solution is disputable.
- Or, the reasons for the maximin criterion take their roots in the exercise of a sense of justice as expressed in the Golden Rule. But, as there are so many possible ways of interpreting the Golden Rule, it could fit with many competing principles of social justice, including the utilitarian one. Therefore, in view of the Rawlsian project, this solution poses problems of relevance.

### **3.1.2) The aporia in Rawls' Political Liberalism**

In *TJ*, Rawls does not insist too much on the role of a reflective equilibrium. As Ricœur rightly notes, this is no longer the case with Rawls's latest works. In *Political*

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<sup>93</sup> Rawls, “Kantian Constructivism in Moral Theory”; Rawls, “A Kantian Conception of Equality.”

<sup>94</sup> As Rawls says, “Kant’s view is marked by a number of deep dualisms, in particular, the dualism between the necessary and the contingent, form and content, reason and desire, and noumena and phenomena.” (Rawls, 1999, p.226) In order to escape the utilitarian interpretation of the original position, Rawls needs first to enforce the distinction between a purely formal conception of equality and a substantial one (Rawls, 2001d), and second to consider the partners under the veil of ignorance as moral persons, them being both rational and reasonable (Rawls, 2001c). He takes the risk to revive the Kantian dualisms between form and content, reason and desire. For further comments, see Kandil, 2012, II, chap.3 to 5.

*Liberalism*, Rawls puts the emphasis on the dual role that general convictions do play in his approach. First, as a methodological guide, they provide the criterion for adjusting the theory in a reasonable way. The aim is that any reasonable citizen deems the theory acceptable. Second, as a litmus test, the general convictions provide the criterion for accepting or rejecting *de facto* the theory.

This emphasis involves two basic changes in Rawls's approach. First, as Ricœur points out<sup>95</sup>, the original position argument can no longer be autonomous, for, if it were, there would be no possibility for a genuine reflective equilibrium to take place. This means that the model of the original position has to be adjusted to our general convictions. Second, Rawls now insists on the good reasons why democratic citizens should agree with the two principles. The related problem is the following. How, once the veil of ignorance has been removed, can democratic citizens subscribe to such principles as identified fictively? Given such changes, Rawls operates a political turn in *Political Liberalism*. Ricœur welcomes this turn in "After Rawls's Theory of Justice" since it really contributes to enhance the circularity logic within the theory.

Yet, as Habermas rightly emphasized during his debate with Rawls, this turn changes the very nature of the Rawlsian project<sup>96</sup>. The principles are now justified provided that they are the object of an overlapping consensus. The latter consists in a process of mutual adjustment between, on the one side, the ideas coming from the democratic culture and tradition of thought, and on the other side, the value judgments the democratic citizens come to defend once they have considered in a well-reasoned way the problems with the basic structure of a well-ordered (or just) society. Due to this adjustment process, they come to formulate converging judgments about the principles of justice. Such judgments are not based on comprehensive values but on political ones. They are the expression of a reasonable pluralism. The approach takes its roots in the democratic tradition, with its promotion of the values of tolerance, freedom and equality. The circular logic Ricœur aimed to find in *TJ* is now effective in *Political Liberalism*. The two principles of justice are now justified, since the citizens of a liberal and democratic society have good reasons to agree to them. Such good reasons refer to the political values that have been historically and collectively promoted in such societies.

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<sup>95</sup> Ricœur, "John Rawls : de l'autonomie morale à la fiction du contrat social," 215.

<sup>96</sup> Finlayson and Freyenhagen, *Habermas and Rawls*.

However, such a change exacerbates the problem arising from the aporia of the just. Indeed, the revised Rawlsian approach cannot anymore be considered as a universalistic or transcendental one. Now it is, as Habermas sums up, a “functional contribution” to “the non-violent institutionalisation of social cooperation”, and this contribution is being restricted to modern societies with a liberal and democratic tradition<sup>97</sup>. Here again the aporia of the just arises, with the contradiction between, on the one hand, the necessity to consider the norm of the just as grounded in our previous convictions of the just, so that it makes good sense to apply the rules derived from such norm in our everyday life, and on the other hand, the necessity to consider the norm of the just as independent from any previous conception of the good, so that it could be universalized and play its role as a moral filter.

#### **4) The aporia of the just in Ricœur’s little ethics**

##### **4.1) The fragility of our convictions**

In his reading of Rawls, Ricœur insists very much on the necessary complementarity between the normative conception of the just and the ethical one. But, in his own approach, his position on this issue is more complex. In his little ethics, he, in one sense, puts the emphasis on this complementarity. He argues for an ethical understanding of the Kantian imperative, as based first on an ethical understanding of the “good will” and second on the analogy drawn between the categorical imperative and the Golden rule<sup>98</sup>. But, at the same time, he insists very much on the basic distinction to make between the two approaches. This distinction is rooted in our two different and even opposite relation to the good and leads to the contrast between our convictions and our responsibilities. On the one side, the good is the object of our most intimate desires; it is based on the exercise of our intuitive sense of injustice and it finds expression in our personal convictions. On the other side, the good takes the form of instructions and prohibitions that are acknowledged as unconditional; our moral duty is to conform our behaviour to such universal requirements.

Yet, Ricœur confesses that our convictions, as based on the exercise of our intuitive sense of injustice, are fragile elements. We cannot, solely on the basis of such convictions, be

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<sup>97</sup> Kandil, *Fondements de La Justice de Feriel Kandil*, II. chap. 5.

<sup>98</sup> The analogy between the Golden Rule and the categorical imperative is based on the fact that, according to Ricœur, the concept of the « good will », which is at the basis of the categorical imperative, relates to some previous ethical desire (see Ricœur, 1990, p.205 ff.).

aware of what justice requires. Ricœur even insists that our convictions are driven by ideological bias. He considers, for example, the case of the history of slavery and segregation in the USA and persistent related stereotypes. More largely, our convictions reflect our adherence to given values and ideals that our neighbours can considerate as unjust. For example, Arabs and Asians may consider that occidental values, as inherited from the liberal and democratic tradition, are wrong. Indeed, according to Ricœur<sup>99</sup>, the opposition between the contextual conception of the good and the universalist conception of the just gives the moral life its structure. Remember that Ricœur figures out this structure by means of a two-dimensional coordinates system based on two axes: the horizontal axis figures out the drive of our ethical desires (from the relation of the self to oneself, to the relation of the self to the others), while the vertical one figures out the different ways in which moral requirements affect us (from the requirement of autonomy to the requirements of social justice). Thus, the idea of an aporia of the just is present in his little ethics. On the one side, he insists that the norm cannot be actually agreed unless it is rooted in our most intimate sense of justice. But, on the other side, he also insists that the condition for the norm to be, in principle, acceptable is that, thanks to its “radical” nature, it played the role of a filter vis-à-vis our convictions. Indeed, in Ricœur’s work, the aporia leads to what I call three paradoxes of justice.

#### **4.2) The paradoxes of justice**

In *Le juste, la justice et son échec*, Ricœur explains that the equality requirement involved in the idea of justice can be stated as follows: “To afford similar treatment to similar cases”. Such a device has to be understood in both a normative and an ethical way. The paradoxes come from the fact that the resulting judgments are contradictory in principle. On the one side, to afford similar treatment to similar cases means to impose the same general rules to those who are considered as equal. On the other hand, to afford non-similar treatment to non-similar cases means to make particular judgments as based on the singularity of the involved persons. How, at the same time, can we treat people as equal and take into account their singularity?

In effect, as Ricœur argues, the idea of justice refers to “the opposition between two extremes”<sup>100</sup>. At one extreme, the idea of justice is “transcendental”. It refers to the “auto-justification of the pure idea of the just”. According to the latter, the equality treatment applies to any person whose general characteristics are similar. The rules are then defined in a

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<sup>99</sup> Ricœur, “The Universal and the Historical.”

<sup>100</sup> Ricœur, *Le juste, la justice et son échec*, 7.

very general way, with no regard to the singularity of the people to whom it may apply. This idea of justice is a regulative one for the whole domain of the positive law. In moral philosophy, it is up to modern formalism to address it.

At the other extreme, “the idea of the just is no more than the idea of the good as considered from the point of view of the relationships between the self and the others”<sup>101</sup>. The equality requirement applies to the way in which, in such interpersonal relationships, people consider themselves and others. As Aristotle, cited by Ricœur, points out, this comparative idea of justice is the basis of the exercise of the most perfect virtue, the one that deals with the quality of our interpersonal relations with other human beings.

Given such extremes, the requirement to treat people fairly gives rise to contradictory judgments, depending whether they are normative (i.e. based on transcendental principles) or ethical (i.e. based on comparative purposes). Such contradictions lead to three paradoxes at least. These are the paradoxes Ricœur focuses on: the first one is the paradox of legal justice, the second one is the paradox of distributional justice, and the third one is the paradox of political justice.

The first paradox takes place within the juridical domain. It is about legal justice, and more specifically about criminal justice. In *Le juste, la justice et son échec*, Ricœur explains: “It seems to me that the opposition between the auto-justification of the pure idea of the just and the weakness of the argument in favor of the right to punish could serve as a framework for investigating the strengths and weaknesses of all legal order, including positive right”<sup>102</sup>. This opposition, Ricœur says, is the source of “the failure that affects, in particular, the judicial form of the law”<sup>103</sup>. This failure has to do with the connection between right and coercion. On the one side, the coercion of the people is rational since it is at the basis of the rule of law. Thanks to the latter, people can benefit from a civil status and can be protected from the violence of a vindictive justice<sup>104</sup>. But, on the other side, this constraint is abusive since it gives rise, within the criminal justice system itself, to an “intellectual scandal”<sup>105</sup>. This one consists in the pain those who have been convicted are forced to suffer. There is no *rational* justification for this pain, “which seems to be added, from the outside, by the legal

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<sup>101</sup> Ricœur, 9.

<sup>102</sup> Ricœur, 7.

<sup>103</sup> Ricœur, 18.

<sup>104</sup> Ricœur, 22.

<sup>105</sup> Ricœur, 28.

institution itself, to the primary pain the victim of a prejudice, of a damage, of a harm suffers”<sup>106</sup>. In the case of criminal law, Ricœur argues, the suffering that is handed down to the guilty person is ethically unjustified whatever the considered point of view. In itself, it does not contribute to the rehabilitation of convicted persons, nor does it contribute to the compensation of victims or to the retribution of the law<sup>107</sup>. This is to put the emphasis on the contradiction between the positive social function of the legal on the normative side and its failure on the ethical side. The purpose of the law is to stop the cycle of vindictive justice. But as the law fails to re-establish or to initiate by itself good interpersonal relationships, then it contributes to resetting the cycle of violence<sup>108</sup>. Thus, the legal justice paradox comes from the fact that the criminal justice system “repays evil for evil”<sup>109</sup>. The reason for this paradox is due to the contrasting considerations coming from law enforcement and from the ethics of caring.

The second paradox takes place within the social domain. It is about the fair distribution of benefits and burdens within social cooperation. As Ricœur claims in “Universality and History”, such a distribution must be set in accordance with universal principles of justice. These are the principles of distributive justice that are established as valid “irrespective of the diversity of people, of communities and cultures that may implement them, and with no auto-limitations due to particular circumstances of implementation.”<sup>110</sup> More precisely, Ricœur explains, following Rawls, that such universal principles are needed in order to solve distribution problems in a fair and equal manner. Indeed, policy makers who want to be fair must base their decisions about the allocation of goods on non-disputable criteria of impartiality and equality. Such criteria have to be defined from a transcendental point of view, i.e. from a point of view that is independent of those persons involved in the distribution conflicts. If that were not the case, the judgments of the policy makers would be regarded neither as impartial nor as equitable. They would depend on the identity of the concerned people, groups or communities, on the competing conceptions of the good they promote and on the various power relations they are involved in. Instead of accommodating conflicts of distribution among the various people, communities or groups, these conflicts

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<sup>106</sup> Ricœur, 28.

<sup>107</sup> Ricœur, 55.

<sup>108</sup> See Ricœur, 2001e.

<sup>109</sup> Ricœur, “Etat et violence,” 281.

<sup>110</sup> Ricœur, “The Universal and the Historical,” 267.

would be fuelled. However, as Ricœur, following Walzer<sup>111</sup> and Taylor<sup>112</sup>, stresses, distribution decisions would be socially irrelevant or meaningless if they were not rooted in the “ethos” of concerned communities or “historic groups”. By “ethos” he means, “the ethical and mythical core” of the life of a given historic community<sup>113</sup>. Thus, the ethos refers to the social practices, the cultural traditions, and the symbolic imagination of the considered community. Indeed, as the definition of a fair distribution among the members of a given community depends on the meaning of the distributed goods and on their respective valuations, the fairness depends on the ethos of the considered community. This definition may differ significantly from community to community. Yet, Ricœur notes, since such meanings and valuations depend on the conceptions of the good that may be defended, the problem with a fair distribution remains and maybe exacerbated in the context of multicultural and multi-religious societies. Thus, the paradox of distributive justice arises from the fact that, on the one hand, for reasons of fairness, distribution criteria must be regarded as universal and, on the other hand, for comprehensive reasons, these criteria must be conceived and defined inside of a historical and cultural context. Such paradox applies whatever the bundle of social goods to be distributed. Yet, as we saw before, Ricœur himself insists on the paradox in relation to the distribution of one particular social good, namely political power<sup>114</sup>.

The third paradox of justice takes place within the political realm. It is about political justice, or the justice of the State. As Ricœur following Weber, insists, the work of the State is based on the use of legitimate violence<sup>115</sup>. The State, by means of its main institutions, decides what the right public action is and ensures its implementation. But justice and legitimacy are two different requirements. The paradox of political justice comes from the conflation between the two. On the one hand, without this conflation, the State would lose its authority, i.e. its capacity to maintain social order. But, on the other hand, this conflation contributes, mainly in the democratic context, to the dismissal of the foundations of the State. Indeed, in such a context, the State’s foundations are the values and principles at the basis of the democratic ideal of social cooperation. These are, mainly, the values of freedom, equality, human dignity and the respect owed to the people. The reference to such values and to the

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<sup>111</sup> Walzer, *Spheres of justice*.

<sup>112</sup> Taylor, *Sources of the self*; Taylor, *Multiculturalism*.

<sup>113</sup> Ricœur, “Tâches de l’éducateur politique,” 248.

<sup>114</sup> See §2.2.2

<sup>115</sup> Ricœur, “Etat et violence.”

underpinning principles of justice gives the democratic State its legitimacy. The paradox of political justice comes from the possible contradiction between such values and principles on the one hand, and the coercion exercised by the State in the name of the rule of law on the other hand. The contradiction can lead to tragic situations. This is the case when the legitimate violence the State exercises on its people transgresses the prohibition against murder. As Ricœur explains, “the ‘Thou shall not kill’ designs the allowable limits that the State, with its own violence, cannot transgress without going itself out of the sphere of goodness, this sphere where its violence remains reasonable”<sup>116</sup>. The problem arises when, for the sake of the law, the State uses murder as a necessary means. As Ricœur stresses, moral issues related to the idea of a just war illustrate such a paradox. But, this is not the only case, for as Ricœur, following Machiavelli, reminds us, “The State is this reality that, until now, has always included murder as a condition of its existence, of its survival and first of its establishment”<sup>117</sup>. According to Ricœur, “This is where the State is revealed to be a worrying greatness”<sup>118</sup>. On the one hand, the State provides the conditions for fair cooperation based on the rule of law; but on the other hand, for the sake of this very rule, it can go beyond the most basic moral requirements. This paradox is tragic since it causes pain, suffering and death. It finds concrete expression in the moral conflicts it creates. Ricœur puts particular emphasis on those moral conflicts that result from the call to arms. The citizen’s moral consciousness is torn between an ethics of conviction on the one hand, and an ethics of responsibility on the other hand. The former is based on the conviction that killing is evil; the latter is based on the requirement to act responsibly and follow the rules of the State. Such moral conflict is tragic and leads to “a hard choice between two ethics of distress: one is to agree with murder with the aim at ensuring the survival of the State; the other one is to assume treason with the aim to witness”<sup>119</sup>. The first ethic of distress leads, for the sake of the State, to the sacrifice of one’s most intimate convictions about good and evil. The second ethic of distress is at the basis of the two phenomena of conscientious objection and civil disobedience. It leads to the sacrifice of the State for the sake of one’s own convictions. As such convictions are a threat for the State, “I have no right to bear witness if I cannot assume, in addition to the risk, the relating meaning, namely the threat and, even the sacrifice of my State”<sup>120</sup>. As Ricœur explains, my intimate convictions may be justified either for cultural or ethical reasons (including religious

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<sup>116</sup> Ricœur, 288.

<sup>117</sup> Ricœur, 288.

<sup>118</sup> Ricœur, 288.

<sup>119</sup> Ricœur, 292.

<sup>120</sup> Ricœur, 291.

ones) or, in extreme circumstances, for political ones. The first case refers to conscientious objection, the second one to civil disobedience. In the latter case, “the sacrifice of my State becomes a political duty rather than an absolute witness”<sup>121</sup>. As an illustration, Ricœur refers to “the decision some anti-Nazis in Germany have faced”<sup>122</sup>. Thus, with the political paradox, the aporetical dimension of justice is pushed to its paroxysm. It is precisely because of this aporetical dimension that the most important level in moral life is, according to Ricœur, the third one, namely the level of practical wisdom.

### **5) Conclusion: dealing with the aporia of the just with practical wisdom**

Ricœur’s thought on justice is one of conflict rather than one of consensus or compromise<sup>123</sup>. This is obvious when his approach is compared to the Rawlsian one. Rawls’ aim is to identify the ideal conditions under which a universal consensus on the principles of justice may be reached, while Ricœur’s aim is to put the emphasis on the dialectical relation between the good and the just. Indeed, with his paradoxical interpretation of Rawls’ theory of justice, Ricœur contributes to put the focus on the aporetical dimension of justice.

As shown above, the aporia of the just poses a major problem for Rawls. This is not the case with Ricœur’s approach. The aporia is at the core of the dialectic dynamic Ricœur puts the focus on in his study of the moral life. As further argued, in Ricœur’s approach, the aporia leads to three paradoxes of justice, as I have called them. These are the following: first, the paradox of legal justice, as based on the contradiction between legal coercion and ethical reconstruction; second, the paradox of distributive justice as based on the contradiction between on the one hand the formal need for universal principles of distributive justice and on the other hand the ethical relevance of distributive rules that are rooted in culture and history; third, the paradox of political justice as based on the contradiction between legitimacy and justice (i.e., on one side political legitimacy that is rooted in the rule of law and on the other side intimate convictions about the good and the evil). With such paradoxes, the importance of the third level of moral life, which Ricœur refers to in his little ethics, becomes apparent. This is the level of practical wisdom. It corresponds to the moment when decision makers aim to act in a fair way, and then go beyond the conflicts between the just and the good.

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<sup>121</sup> Ricœur, 291.

<sup>122</sup> Ricœur, 291.

<sup>123</sup> In “A la poursuite du paradoxe politique,” Padis focuses on the political paradox in Ricœur’s work. He also promotes the idea of a Ricœurian thought of conflict.

Accordingly, fair decisions are those that are based on the exercise of practical wisdom. This exercise has nothing to do with Hegelian synthesis. Indeed, Ricœur insists that if, in a given context, conciliation between the good and the just is a possible solution, it is always in a fragile and provisional way. Moreover, the considered solution is necessarily unique and creative insofar as it has to fit with the specific conflict at stake, within the considered singular context of action. In order to reach such a solution, Ricœur says, decision makers must exercise courage and tact<sup>124</sup>. However, Ricœur adds, such virtues would be worthless if it were impossible for decision makers to establish provisional mediations between the just and the good. In short, it is the responsibility of the decision maker “to mobilize the resources of the ethics of living well, so that she could, if not resolve, at least enable the aporia to be eased.”<sup>125</sup> These are the aporia, Ricœur recalls, which “come from the excessive demands of a theory of justice (...), which focuses exclusively on the formal principles and on the rigorous procedure.”<sup>126</sup>

In his latest works on justice, such as *Amour et Justice*<sup>127</sup> and *The Course of Recognition*,<sup>128</sup> Ricœur puts particular emphasis on such mediation resources. Far from any utopian considerations, but still against any temptation of a disenchanted discourse, Ricœur insists on the plurality of these mediations between the good and the just. Some are strictly ethical, as based on positive social feelings such as compassion, care, friendship and benevolence, all feelings that play a decisive role in the ethical process of mutual recognition. But he also insists on those mediation resources that are either supra-ethical, like Christian charity, or infra-ethical, like love. Indeed, whatever the nature of such mediations, they draw from the spectrum of all human emotions. Thanks to such positive feelings, “Practical wisdom leads us back, beyond duties, norms, obligations and prohibitions, to the basis of the ethical life, that is to say the self-esteem due to the solicitude that results from friendship and love relations, and the desire to live in just institutions, *but here and now.*”<sup>129</sup>

## Acknowledgements

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<sup>124</sup> See Basanguka, “Éthique et imagination chez Paul Ricœur.”

<sup>125</sup> Ricœur, “The Universal and the Historical,” 285.

<sup>126</sup> Ricœur, *ibid.*

<sup>127</sup> Ricœur, *Amour et justice*.

<sup>128</sup> Ricoeur, *The Course of Recognition*.

<sup>129</sup> Ricœur, *La Philosophie Morale. Avec Paul Ricœur Au Forum Universitaire De l’Ouest Parisien.*

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