

Lie Or Utopia? The Problem Of The Subject In Two Contemporary Liberal Theories

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[“Archiv für Recht und Sozialphilosophie”, 86, pp. 70-87, 2000]

Abstract

The problem of good and the problem of justice are a core question of moral, political and legal philosophy. But whose good are we speaking about? And whose right are we dealing with? Aim of this work is to show that it could be useful to read some moral and legal question from the point of view of the problem of the identification of the moral subject. This problem can be viewed either as a theoretical question or as a practical one. The former opinion implies that metaphysics establishes who is the moral subject and ethics must take it for granted: but what should we do if an outsider claims to be recognised as a moral subject? The latter opinion implies that ethics should be simply an open net of rules, whose subject is whoever can be a free and responsible agent: but who are we to apply these rules to? Indeed, the former opinion grants us a strong definition of moral subject; on the contrary the latter one gives us only a weak definition of it. However, a weak definition is open to new claims and criticisms, because it implies the awareness that a fixed definition of the moral subject can never be taken for granted. On the contrary, a strong metaphysical definition implies an exclusive and unchanging worldview and grants us no concept to understand and handle novelty.

Statement of the problem

The approach to moral and juridical issues put forward in this paper aims to make a contribution to current debate by proposing a non-mainstream - indeed eccentric - viewpoint. The paper will address the problem of identifying the moral subject, espousing the view that such a problem properly pertains to the field of practical, rather than theoretical philosophy. Our arguments will be divided into three sections: in the first place, we will examine Sandel's critique of Rawls, in which Sandel focuses on the problem of the subject; our underlying purpose will be to highlight the way such a problem can have an important bearing on the field of contemporary political philosophy. Secondly, we will analyze two Platonic myths, the myth of Er and the Phoenician tale, in order to outline two strategies - one practical and the other theoretical - for solution of the problem of the subject. Finally, we will show the two strategies at work in two contemporary liberal paradigms: the neutralist paradigm, exemplified by B.A. Ackerman, as compared with the communitarian paradigm, represented by Michael Walzer. This two-pronged approach will illustrate how the philosophical problem of the subject not only reflects immediate political problems, but how it can also be of use in the interpretation of them.

The traditional nucleus of ethics is the problem of the good. Similarly, the heart of political philosophy is the problem of justice. But of what subject is the good predicated? Of what group of subjects is justice predicated? The answer to this question is generally taken for granted; it is, in fact, assumed as already given by theoretical philosophy. But a different procedural mode is conceivable. Accepting the traditional hierarchy of the fields of philosophical knowledge is not a simple methodological choice; from the point of view of practical philosophy, acceptance of such a hierarchy implies that the problem of identification of the subject can be disregarded, since it has already been resolved outside the sphere of practical philosophy.

In the present discussion, we will assimilate the problem of identification of the moral subject into the problem of identification of the juridical subject. However, this assimilation is to be regarded merely as a heuristic tool, which can be transcended or suspended according to the different analytical context of the investigation. For instance, in the present paper we will deal with citizenship and the various types of rights involved. By citizenship we mean, in agreement with the well-known definition by T.H. Marshall, a status conferred on those who are by right fully entitled members of a given community. This status consists of a collection of rights that is undergoing constant expansion, both as regards the number of subjects admitted to member status and the quality of the rights awardedⁱ. Certainly, the problem of how to identify a moral subject and how to distinguish a citizen - a subject enjoying citizenship rights - are two distinct questions. Yet there is a historical link between them, as has been explained by Luigi Ferrajoli. The progressive aspect of modernity - the universalism of fundamental rights - is not so much the bestowing of a set of privileges on a greater number of members of limited communities, but is rather the development of the so-called rights of personal status, which are associated with the simple fact of being a person, and not with that of being a citizenⁱⁱ.

From a theoretical point of view, the great force of human rights based on the doctrine of natural law has resided precisely in the possibility granted to each individual to claim such rights - by the mere virtue of the individual's subjectivity - even against the political systems that have come to exist in the course of history: that is to say, against positive citizenship communities. It is the acknowledgement of this historical heritage that authorizes, at least momentarily, an assimilation of the two questions. Within such a perspective, it is by no means fortuitous that precisely those scholars who are concerned with political philosophy are also those who are confronted with the problem of the subject. To give an example, it is interesting to explore the way in which this matter has been treated by M.J. Sandel, who offers a paradigmatic criticism of Rawls' neo-contractualismⁱⁱⁱ.

In Sandel's eyes, Rawls' deontological doctrine - like every deontological doctrine - is based on the priority of that which is just over that which is good. This priority, in its turn, is justified by the fact that there is no shared standard yardstick for a definition of what is good, or, more correctly, for a definition of happiness. On the other hand, Rawls argues, even if we had such a common yardstick, the condition of separateness of each person would thwart any justification - in a utilitarian framework - of those actions which harm some individuals for the sake of the happiness of the majority^{iv}. But this presupposes that the moral subject is capable of distinguishing between justice, that is to say the rules and regulations necessary to social co-operation, and what is good for him. In other words, Rawls assumes that the subject is able to distance himself from his own values and goals by means of his critical ability, in the name of a justice that must be valid for everybody and must preserve equally the freedom of each individual to pursue his own good.

It is possible to achieve such a distance by virtue of two conditions, which can be seen as alternatives to each another. The first condition is that the subject identifies himself metaphysically and *a priori* with an autonomous personality, built up on the basis of his own choices pertaining to contents; while the second is that the circumstances of justice must be such that co-operation can exist only if every subject sets his or her personal values and goals aside. Rawls does not wish to subscribe to the metaphysical thesis of an autonomous personality nucleus, preferring to follow Hume's path of the circumstances of justice. These, in Rawls' view, are represented by the relative scarcity of resources and by the fact that all subjects who cooperate are motivated by different interests and goals. The idea of the original position, where the contracting individuals are unaware of their own social conditions and convictions, is used only as an expedient to explain what the situation requires: since there is virtually no agreement on values, then we are necessarily compelled to make collective decisions concerning justice, leaving values aside. Thus, according to Sandel, Rawls' theory is, as it were, a contingent deontologist theory^v. This aspect enables the original position to describe moral subjects as they really are: namely, they are seen as effectively capable of abstracting from their own values and goals.

Such a step is of crucial importance in Sandel's argument, since it allows him to reduce practical problems to theoretical problems. If a moral theory is in the last analysis grounded on a description of the moral subject, then it is possible to refute the theory simply by showing that this description is theoretically mistaken, thereby skirting the burdensome philosophical-practical analysis of the system of imperatives and values suggested by the description itself. Following this pattern, Sandel states: "Justice cannot be primary in the deontological sense, because we cannot coherently regard ourselves as the kind of beings the deontological ethic - whether Kantian or Rawlsian - requires us to be"^{vi}.

In his application of this strategy, Sandel holds that, in order to function, Rawls' justice must presuppose a moral subject not defined by his own goals, but rather one which is capable of distancing himself from them, suspending them and choosing among them at will. The quintessential practical question for such a subject is: "What goals should I choose?"^{vii} This presupposes that values and goals are offered as options to an abstract and indifferent choice centre. But how then can justice be held to be an unconditional and priority value as compared to all other contingent goals and values that are offered to the indifferent choice of this subject?^{viii} Moreover, Sandel objects, we see ourselves in this way only when we do not succeed in grasping the constitutive relationship existing between the person and his goals, due to lack of knowledge or to inadequate thinking. But a thinking subject would reduce the practical problem to a theoretical problem: "Who am I?"^{ix} Furthermore, thought would allow an individual to take into consideration his context, community and history; knowing oneself means acquiring the greatest degree of concreteness and historicity. The less opaque are the people, the less justice is necessary.

In such a perspective, the practical problem of moral action is reduced to a theoretical problem: I know what I have to do if, by means of my ability to think, I have correctly understood who I am. The field of operation of freedom - and the guarantee of freedom, treated by both Kant and Rawls in their practical philosophy, (though in different ways), is identical with that of ignorance and error. Sandel, of course, does not disavow liberal justice, but maintains that the specific field of liberal justice is precisely the area where the opacity of the people generates conflicting claims. A family whose members live in harmony has no need of justice; the latter comes on to the stage as a surrogate and minor virtue only if love fails^x. But can the community really tell us who we are and therefore also what we should do? The answer is positive, Sandel implicitly acknowledges, only on two conditions; that I should be able to identify myself univocally within the community, and that all roles should be determined once and for all. Yet so rigid a determination is an ideal that no community existing in history is capable of translating into practice, because even the most dogmatic and widely shared tradition is subject, if not to criticism, at least to interpretation. Thus a moral canon elaborated by the self-identification of the moral subject and of his duties, through use of his own thought processes, is not only at least partially indeterminate but also doomed to retain its indeterminacy, since every self-respecting moral responsibility presupposes that the moral subject has had the possibility of choosing and is not bound to an essence independent from his decisions that simply awaits his discovery. Any hypothetical moral subject who decided what to do simply by establishing what he is would not be a free subject, and least of all would he be a responsible subject. For example, anyone imagining his cowardliness to be intrinsic to his own personality could thereby shirk any moral blame, precisely because "one can't give oneself courage".

As we have seen, Sandel refutes a system of practical philosophy by adopting a theoretical strategy: Rawls' justice is untenable, not so much because it is axiologically unsound or incoherent but rather, because it presupposes a theory of the subject resulting from a deplorable lack of knowledge. We therefore need to explore whether the problem of the identification of the moral subject can be dealt with

only by this traditional theoretical strategy, or if, on the contrary, it can also, and in fact primarily, be conceived as a practical problem.

Two alternative solutions to the problem of the subject: the myth of Er and the Phoenician tale

Let us consider the famous opening words of the first part of Kant's *Grundlegung zur Metaphysik der Sitten*:

Nothing can be possibly be conceived in the world, or even out of it, which can be called good without qualification, except a Good Will. Intelligence, wit, judgement, and the other talents of the mind, however they may be named, or courage, resolution, perseverance, as qualities of temperament, are undoubtedly good and desirable in many respects; but these gifts of nature may also become extremely bad and mischievous if the will which is to make use of them, and which, therefore, constitutes what is called character, is not good. It is the same with the gifts of fortune.^{xi}

..We can see that from Kant's point of view, the context of ethics is the world, but not merely the world, and the primary object of moral assessment is the will. But why should the context of ethics be extended beyond the world, with the will being assumed as its primary object? Kant's argument would have been virtually identical if he had said that in the world - that is to say, in our experience - only a good man, a virtuous man, can be unconditionally good, and then had gone on to state what he meant by a good man, instead of a good will. Kant's choice of terminology could be mistaken for a complication, since it forces us to raise the question: "Who can be attributed a will, whether good or bad?" If the context of ethics is not simply and uniquely the world of our experience, then the subject to whom a will can be attributed is not merely the one we are accustomed to considering as a moral subject in our own experience, but a far more indeterminate creature. Kant proceeded to attempt to define what makes a will good, and he did not seem to be concerned with the question of to whom such a will can be attributed; that is to say, the question of who is the moral subject.

Our purpose in this paper is to show that a way of proceeding such as that of Kant can be justified as a strategic choice; namely, the choice to define the just or the good while leaving the identification of the subject indeterminate. It would in fact be possible to choose the opposite procedure; say, in the first place to define the moral subject and his context, and, in the second place, to consider the problem of the good in relation to the moral subject. We may illustrate the difference between the two strategies by appealing to a classical text, Plato's *Republic*, wherein justice is presented as the basic problem^{xii}. We will analyze three images in particular: the myth of the ring of Gyges, the so-called Phoenician tale and the myth of Er. All three of these myths - though in different ways - touch on the problem of the connection between justice, civil or personal, and the subject to which it refers.

In the second book of the *Republic*, Glaucon used the myth of the ring of Gyges - the story of a shepherd who became a king by exploiting the invisibility bestowed upon him by a magic ring - in order to radicalize one of the questions Trasimachus had already posed: if the only reason for behaving justly is established by social conventions, then it makes sense to behave justly only in public, when we do not have the strength to behave differently^{xiii}. Glaucon's challenge is a radical one, for not only does it nullify the validity of traditional Greek morals, which was based on reputation, but it is also a hindrance to the construction of any model of civil and personal justice that refers, even though minimally, to notions like control and social bargaining. The ring of Gyges compels us to pretend we cannot "see" - and in Classical Greek not to see means not to know - the subject from whose point of view justice must be formulated and legitimated. The moral subject is invisible; therefore, it cannot be identified with a "historical" subject, in the etymological sense of the word - that is to say known, since it has been seen -, but it must be built on a model detached from any social reference.

By slightly forcing the semantic meaning of the myth, one could even add that the condition of invisibility is somewhat ambiguous: in the case of Gyges, it represents the possibility - since it is a controllable invisibility - temporarily to opt out of the social *panoptikon* in order to derive benefits from within society itself. But there is also a different kind of invisibility, the non-controllable and imposed invisibility of the outcast and the unacknowledged. A justice of the invisible should therefore be embodied in a structurally open society, since morality and its application should be independent of observation and consideration by others. Taking the tale of the ring of Gyges seriously means rejecting a definition of the problem of the moral subject based on what we "see", on what we are culturally accustomed to considering as a subject. What is just for a subject we cannot see? And why should one use such a mechanism, which is analogous to the Kantian choice of centering discussion on a good "will" instead of on a good "human being"?

Plato elaborated a unitary concept of justice based on the analogy between the internal hierarchy of the individual soul and the external hierarchy of social classes. Such a concept of justice has a twofold role: in an imaginary ideal society, it serves as a legitimating horizon for social differences, while in real societies it serves as a critical-normative horizon. In the former case, from a political point of view, this concept of justice has a conservative function, in the latter case, it has a revolutionary function. Further, in the former case it is addressed to subjects who are genuinely organized according to its rules, while in the latter case, it is addressed to subjects who are organized according to a different set-up from that which its rule would prescribe. More simply stated, this concept means that in the first case, it serves the purpose of reading and justifying a world of experience, while in the second case, it serves the purpose of suggesting solutions that go beyond experience.

The Phoenician tale - which Socrates in the *Republic* explicitly characterized as a falsity, to the extent that he introduced it with unconcealed reluctance and shame, is a typical foundation myth that can be

compared to genuine myths, like Cadmus' Theban myth. That is, citizens are born as ready-formed adults and are shaped by the earth, to which they owe help and defence. Since they have been born of the same mother, they must consider each other as brothers. But, the underground god who has moulded them has mixed gold with the dough of those who will be qualified for command, silver with the dough of their auxiliaries, and iron or bronze with that of manual workers. Consequently, social roles must be attributed exactly, their distribution following this metallic and divine determination^{xiv}. Like many genuine foundation myths, the Phoenician tale suggests a horizon of legitimating efficacy; that is, it tells of events which, by the very fact that they are believed and handed down over the generations, legitimate not only a society, but also its hierarchical structures.

Socrates, in the *Republic*, suggested a monolithic model of the moral subject, but his artificial myth introduced a hierarchy founded on inclusion or exclusion on the basis of innate characteristics. Thus citizens are in the first place differentiated from other human beings inasmuch they are the only ones who can claim to have been born from the earth, and in the second place, the tripartite hierarchy is based on strong and irrevocable differences. The Phoenician tale of birth and foundation considers the difference among classes to be as ineluctable and determined as the material consistency of objects: for just as an object forged in bronze cannot become gold, so those who were born as craftsmen cannot become philosophers. One might think that this myth should be viewed as no more than a face-saving solution designed to cope with the logical difficulties involved in the application of a unitary model of the moral subject to a hierarchical society. Why, then, did Socrates, in book III, take such care to point out the falseness and shamefulness of this myth? Furthermore, this explicit falseness is all more astonishing inasmuch as the artificial myth of birth stands in stark contrast with the myth of death - the tale of Er -, which forms the conclusion of the tenth and last book of *the Republic*.

Er, a brave soldier fallen on the battlefield, obtained the privilege of returning from the afterlife and retaining the memory of all that takes place there, that is to say the cyclical awards to the souls that are about to return to life on earth. This consists of a redistribution of an enormous but finite number of - human and animal - life models (*paradeigmata biou*), taken by a herald from the knees of the Fate who sings the past, Lachesis. The peculiarity of this redistribution is that the assignment of life paradigms is the result of a choice made by each soul involved, with fate intervening only in the drawing of lots to determine whose turn it is to make a choice. Note, however, that the turn sequence is important because the first souls have the faculty of choosing from a broader range of destinies. The choice takes place after the Fate (Lachesis) has instructed a herald to pronounce these words:

Souls that live for a day, now is the beginning of another cycle of mortal generation where birth is the beacon of death. No divinity [*daimon*] shall cast lots for you, but you shall choose you your deity [*daimon*]. (...) Virtue has no master over her; and each shall have more or less of her as he honours her or does her despite. The blame is his who chooses: God is blameless.^{xv}

On a strictly ontological plane, Plato's universe is cyclical and barred from any possible novelty. The souls choose among a large but finite number of possibilities, which do not fall within the purview of the Fate who sings the future, but of the one who sings the past, which as such is unchangeable and irrevocable. Yet, to this closed ontology there corresponds a maximum opening to axiology. For the myth of Er suggests that it is the subject involved who is held responsible for his own life paradigm, and not the *daimon* - the traditional expression of a cosmic partitioning - above any personal decision. And above all, it detaches the faculty of choice from physical ontology. It is in fact worth noting that the life models offered for distribution include men and women equally, as well as people from different social conditions, and even animals.

The faculty of choice - and of choosing according to reason - is a possibility that does not depend on one's visible image, which is biologically, socially and historically determined. Rather, in order to advocate whatever moral paradigm, the faculty of choice must be presupposed: to propose someone a model implies that he or she can choose to be different from what he or she is, or has been. Ontologically speaking, virtue is *adespoton*, that is to say independent, without masters: no quality of the visible world can be assumed as a reason determining the statute, destination and perfectibility of those who are endowed with the faculty of choice.

The symbolic depth of the myth of Er can perhaps also be explained by referring to the Platonic concept of the good, the supreme principle of the hierarchy of ideas, which is superior both to existence and to the *ousia*, as a *realitas* endowed with substantiality:^{xvi} superior, therefore, not only to knowledge, but to the Being as existence, essence and truth^{xvii}. Above the semantic unity and fixity of the multiplicity of paradigms that form the realm of ideas, the good is, in Plato's system, a higher syntactic principle of the ordering of existence, of orientation and knowability, endowed with the unity and absoluteness characteristic of ideas, but semantically void^{xviii}. As is the case for any other idea, this principle cannot be defined by a relative and conditioned example, but, unlike ideas, it cannot be determined without already being presupposed. For instance, anyone aiming to exhaust the good semantically in terms of intelligence or pleasure could not fail to re-introduce it as a syntactic principle of axiological hierarchical structuring of the various types of intelligence and pleasure.

The good is therefore beyond essence and existence, and it is superior to these in dignity and *dynamis*.^{xix} That is, it is richer in value, as well as in power, potentiality, and possibility. To argue within the framework of the idea of the good means to presuppose that that which is - since it is orientable according to axiological models that are not effective and actual, but rather purely example-based - can be beyond that which is. The relationship between the good and ontological determinations is as open as

the relationship between the virtue of the souls in the myth of Er - endowed with the faculty of choice - and the lives that are the object of that choice. For just as the good cannot be determined by and embodied in any one idea once and for all - because it is the horizon of assessability and of the order of ideas - so also virtue has no masters, because it cannot be intrinsically connected to any socially or biologically determined life model. In broader terms, the applicability of any given axiological model is not essentially linked to any actual ontological model, for the reason that it is based on the presupposition that a being can be different from what it is. In short, an axiological paradigm is a project which is valid beyond the actual; therefore, it is something projecting the existing beyond the existing.

The Phoenician tale tells of an irrevocable process of actualization of moral subjects according to an ineluctable metallic determination and destination. The myth of Er, in contrast, maintains that all determination in the visible world can be regarded as subject to a choice beyond the visible world^{xx}. Those who elaborate axiological models presuppose a reality open to possibility - even in a finite and cyclical universe - but those who apply such models find themselves compelled to decide which actual creatures should be included and which ones should be excluded. As well, they should judge subjects not on the basis of their possibility, but instead on the basis of their actuality. Between the opening of the axiological model and the narrowness of its conditions of application stands a *hiatus*, due to the need to apply a possibility, in itself beyond existence, to a series of actual entities. In extreme terms, we could claim that it is structurally unfair to present axiological models that are open to every creature capable of choosing to be better than it is.

Yet, we would argue, we are forced to apply such models, by any type of criterion, in order to judge and impose an order on a finite and determined group of actually existing creatures. In other words, when we apply a moral model which includes freedom as its fundamental component to certain given empirical creatures - and not to others - we are obliged to "tell lies", that is, to apply our model in a discriminatory manner, without being capable of thoroughly justifying such a discrimination. Nevertheless, this lie cannot be avoided, because our subjectively open moral theory would be totally inapplicable if we did not take upon ourselves the responsibility of pointing out the empirical subjects involved.

This Platonic digression leads to the formulation of two strategic models addressing the link between the problem of the subject and practical philosophy. The first model is that of the Phoenician tale; the subjects are a given entity, a constant. A theory of justice, or shall we say, a theory of the good, is built up on the basis of their structure. The second model is that of the myth of Er; the theory of the good or of justice is constructed independently of the image of the subject, which is a variable. It may be of some importance to notice that those interpreters who are interested in viewing Plato as an authoritarian or totalitarian philosopher underline the importance of the Phoenician tale, while those interpreters who read Plato as a reformer and a critic of culture prefer to underline the myth of Er^{xxi}.

Each of these two models is plagued by its own characteristic difficulties. If we assume the subject as an already given constant, we can offer a well determined and concrete image of such a subject, albeit with a severe limitation. Namely, we must presuppose that the universe of possible moral subjects is finite and given once and for all. For to assume that the subject is a given entity means presupposing a metaphysically closed universe, devoid of novelty and historicity. The subject can be a constant only in the pre-modern, static world of Aristotle, and of Machiavelli.

Expressed in terms of the metaphor contained in the Phoenician tale, it can be said that this myth "works" only if everyone subscribes to the hierarchy of gold, silver and bronze and, most of all, only if we presuppose that the god cannot set about moulding individuals using different metals, or even synthetic materials, which are not included in the recognized hierarchy.

If, on the other hand, the subject is considered as a variable that is of interest for practical philosophy only insofar as it is a bearer of the faculty of choice, and if we assume that the one and only true constant of practical philosophy is the definition of the good or of justice, we can then reconcile our theory with a potentially infinite universe, which is therefore open to change and historicity. Virtue has no masters: any creature, as long as it possesses the faculty of choice, can be the bearer of virtue. Yet when it is necessary to deal with a concrete, actually existing universe, we are in fact confronted with the need to indicate whom we genuinely consider to be a moral subject. And in such a case we cannot refrain from using our experience, which is contingent and historical. For instance, if we were to assume ethics to be a hypothetical-deductive system grounded on postulates, instead of a deductive system grounded on a metaphysical image of the subject, we would be faced with the problem of applying such a system to variable semantic universes without possessing a criterion of application established once and for all.

This type of openness of practical philosophy to history is at one and the same time a force and a weakness. It is a force because it delivers ethics from the grasp of metaphysics, and allows discussion concerning any claims of subjectivity; on the other hand, it is a weakness because ethics, in its application to experience, is cognizant of being founded on a theory of the subject that is particular and contingent. Yet, this openness has a moral and political meaning that is worth underlining because it is of supreme importance. For it now becomes possible to reject *a priori* all discriminatory arguments aimed at the exclusion of some creatures on the grounds that they do not belong to the category of moral subjects. For example, an argument such as Aristotle's famous contention according to which

... it is clear that the city-state is a natural growth, and that man is by nature a political animal [*physei politikon*] and a man that is by nature and not merely by fortune citiless is either low in the scale of humanity or above it.^{xxii}

must be rejected on principle. Indeed, it can be valid only if we presuppose that ethics and political justice are exclusively possessed by a certain kind of subject, who finds his metaphysical space in a universe which is not only finite, but defined once and for all.

An interpretation of some contemporary liberal positions in light of the problem of the subject

We have tried to show the strategic meaning of two different approaches of practical philosophy to the question of the subject, the second being assumed as a constant offered by theory, or as a variable. But the subject also has a relationship to the heart of practical philosophy, that is to say to the problem of the good, in the case of ethics, or to the problem of justice, in the case of politics and law. Here too, it is one thing to formulate a theory of the good based on a subject that is offered, handsomely structured, by metaphysics, but it is quite a different matter to consider the subject as a variable within the framework of an ethical theory of goodwill and a just society formulated independently of its protagonists.

The question of the subject - both as a problem concerning the link between theoretical and practical philosophy, and also as a problem of the relationship between the theory of the subject and the theory of justice - has a significance that we disregard at our peril. To show this, we will take into consideration two variants of contemporary liberalism; communitarian liberalism, of which Michael Walzer will be selected as the representative^{xxiii}, and communitarian liberalism, whose representative will be B. Ackermann^{xxiv}.

Neutralist liberalism proposes a neutral standard of justice which is different from the various concepts of the good of each historically existing individual. In principle, this approach should provide a procedural justice which is valid for any individual, regardless of his ideas or principles. Broadly speaking, the neutral standard theory should presuppose a subject that is not a historical datum, but an abstraction: a bearer of choices and values of which the historical contents - and, to be consistent, the historical image - must be put aside. At least three questions can be addressed to the strategy of neutralist liberalism: a) How can a neutrum - an ideal moral subject - be constituted such that it will function as condition of a legitimization, without presenting itself as an idealization that can be historically relativized? b) How can application of this legitimization condition to experience be legitimated? and c) Specifically, how can the historical "subject", of whom the statute of moral subject is predicated, be identified in particular?

By contrast, communitarian liberalism holds that justice cannot be detached from a concept of the good deeply rooted in history; it therefore asserts that the image of that which we, in our experience, consider as the subject, and the choices made by such a subject, should not be set aside, but rather must constitute the foundation of every ethical and political theory. Such a statement calls forth two questions: a) How can the elevation of a particular historical subject to a model be legitimated? and b) How can decisions be made in the case where the statute of the historically identified subject is historically controversial?

In other words, why should moral choices that form part of the time-worn tradition in my own community be binding on me as well - me a child, an ignorant person or a dissident? And on the basis of what criteria can a subject be excluded or included in the community? Or rather: how can 'community' be defined? This question is highly important in that if the definition of community were grounded on the sharing of certain given values and traditions, a subject who did not share them - e.g. by virtue of being a child, an ignorant person or a dissident - would be automatically excluded from the community itself. Furthermore, there would be no point in demanding from this subject that he or she should conform to the community values, precisely because the dissident would be, for this very reason, an alien^{xxv}.

In consequence, yet another and even more complicated question would arise: if the condition for debate on morals is the fact of being a member of a community of shared values, would then anyone who does not share these values become a subject with whom ethical debate would be impossible? And, politically, would such a subject be a being not residing within the confines of justice? If we recognized as a moral subject only those who share our own values, then any creature whose freedom and rationality were acknowledged but who did not agree with our viewpoint would have to be deprived of the status of moral subject.

In order to explore whether the above questions are meaningful, let us, in the first place, consider the position held by the neutralist liberal Ackerman. Ackerman maintains that liberalism is not connected to a natural right, but is instead a manner of discussing power, a form of political culture^{xxvi}. This manner of discussing power can be defined as a conversation founded on three legitimacy principles: rationality: every person must be willing to respond to the request for legitimization when any of his powers is challenged by anybody else who is left at a disadvantage due to the use made of these powers; coherence: the reasons adduced in a certain circumstance by those who exercise power must not be incompatible with the reasons adduced to justify other claims on power; and neutrality: a justification is not valid if it requires that the holder of power states either that his concept of the good is superior to that of any of his fellow-citizens (no selectivity) or says that he is by nature superior to his fellow-citizens (restriction on statements of unconditional superiority)^{xxvii}.

These conversational rules prevent political debate from resorting to theories of the subject, because anyone seeking to legitimate his own claims on the basis of a theory of the subject against another individual who supports a different theory of the subject would eventually violate the neutrality principle. That is, this individual would effectively be stating: "I legitimate my claim on the basis of the fact that my theory of the subject is superior to yours". Ackerman coherently criticizes the contractual theory put forward in Rawls' early work precisely because it presupposes a theory of the subject which, in Ackerman's view, is a veritable theological residue. For the yardstick used in assessing the legitimacy of claims consists of appealing to a potential entity that would enter from outside, and would be a

hypothetical being existing independently of the organized society on which the contract is to be binding. But individuals exist in reality and they interact with historically existing society. Why should we use as a yardstick the choices that would be made by hypothetical individuals in an original position? If someone questions the theory of the hypothetical subject that lies at the base of such a yardstick, then that someone is eventually obliged to state that his concept of the potential entering member is superior to that of others^{xxviii}.

Ackerman essentially maintains that liberal dialogue is a manner of discussing power that allows legitimization of one's own claims only after a conversation which, in its turn, does not presuppose *a priori* any privileged position. Such a procedure is open to any concrete subject; therefore, it does not entail the presupposition of a theory of the subject. Yet it is possible to take part in the liberal conversation only insofar as a would-be participant possesses dialogic competence, which is therefore the condition for liberal citizenship^{xxix}. For instance, if a monkey were able to carry out the following kind of conversation, it would be fully entitled to be considered a moral subject and a subject by right, because it would leap the culture barrier that separates it from liberal citizenship:

Trainer: Hey! Where do you think you're going?

Ape: Out of this cage.

Trainer: Not if I have anything to say about it.

Ape: Why should you have anything to say about it? I'm at least as good as you are, and I have my own purposes in life!^{xxx}

The condition of citizenship is thus identified with the ability to demand legitimization in a language that is at least potentially comprehensible, and to answer in a neutral manner. But what do we mean by "ability"? This term can be interpreted both in an actual sense, i.e. genuinely "succeeding in", and in a potential sense, with the meaning of "having the possibility", conceivably a latent possibility, to do something. If we interpret "ability" in the first sense, Ackerman's moral universe would be only apparently open; for it would include only those who succeed in carrying out the conversation. Nothing would be easier than to circumscribe this universe arbitrarily, simply by preventing creatures we do not like from talking or even learning to talk. Ackerman would end up by being a communitarian liberal: only individuals who actually participate in the culture of liberal dialogue would be classed as moral subjects. One might then also wonder whether it is really correct to use a simple means of legitimization - the liberal dialogue - as a tool for circumscribing the scope within which it is possible to speak of justice and injustice.

On the other hand, if we interpret "ability" as potentiality, then we need a theory of the subject on the basis of which we could select those creatures that are to be allowed to talk. But this would lead Ackerman to do what he declares he does not wish to do: in selecting the potential moral subject, he would have to appeal to a heritage different from the effective political culture, which he holds to be the only reality of liberal dialogue. In short, as regards the problem of the subject, Ackerman seems to be facing a dilemma: either his neutralist liberalism is assimilated to communitarian liberalism, or it must presuppose a theory of the subject other than the effective presentation of the subject that engages in dialogue.

When Ackerman maintains that the foetus need not be considered a moral subject, for the very reason that it cannot speak in its own defence^{xxxi}, he seemed to be interpreting the "ability" that introduces the condition of liberal citizenship as "effectively succeeding in". But he adopts exactly the opposite standpoint when he argues that it is inadmissible for a parent to appropriate to him/herself the right to isolate a child in order to keep it from learning to speak, thereby preventing the child from staking its own claim to legitimization. This is so, he adds, because a liberal state is by definition a place where all relations that can be mediated through dialogue are genuinely legitimated by liberal conversation^{xxxii}. It is obvious that "can" indicates a mere potential here; therefore Ackerman presupposes a theory of the subject that goes beyond the effective cultural intercourse among subjects who are endowed with the power of speech.

As can be seen, the fact of having failed to address the link between the problem of justice and the problem of identification of its subject leads Ackerman to waver inconsistently between communitarian positions, where moral argument is subordinated to the sharing of a linguistic and cultural horizon, and positions that refer back, using his own words, to a merely hypothetical subject: not actual, but potential. A moral subject is defined not only as the one who in actuality succeeds in legitimating his own claims, but as all those who potentially have the ability to do so. Ackerman sets himself the task of pointing out only one system of legitimization and eschews the metaphysics of the subject. Yet, in this case, in order to be consistent, the category of moral subjects would have to be structurally open: the moral subject is, in many respects, a virtual subject.

If we accept such a perspective, we must however exclude all arguments that legitimate claims towards any third party simply on the grounds of their exclusion from subjectivity. Quoting Ackerman's example again, a justification of freedom of abortion based on the cheap strategy of denying the foetus's subjectivity cannot be accepted: as an argument against any person who opposes abortion and maintains that the foetus has a personality, Ackerman would be forced into making a statement that would violate his neutrality principle, to the effect that: "The foetus is not a moral subject because my theory of the moral subject as a being capable of talking is superior to yours". A really strong argument in favour of the freedom of choice of the pregnant woman should include, among its premises, the hypothesis of the moral subjectivity of the foetus^{xxxiii}.

Let us now turn to an analysis of the position of a communitarian liberal like Walzer, in the perspective of the problem of the identification of the moral subject. We will first of all consider his critique of the contractualism found in Rawls' early works, where Rawls assumes as a yardstick the choices hypothetical contractual individuals would make if a veil of ignorance covered their convictions and personal condition. But, Walzer objected, who can guarantee that those individuals would make the same choice again once they had become common people operating within a context? Rawls seeks to remain aloof from the particularism of interests. But it proves arduous to escape from the specifics of history, culture and membership without transforming the moral subject and the contents of his choices into a void and useless abstraction. Though wishing to be impartial, the members of a political community will not ask themselves: "What would rational individuals choose in such and such universalizing conditions?", but rather: "What would be the choice of individuals similar to us, in a situation similar to ours; one in which we share a common culture and desire to continue so doing?" And such a question becomes transformed into: "What choices have we already made during our life together? What ideas do we really have in common?"^{xxxiv}

This approach to the problem of justice links the content of political and moral choices to the fact of belonging to a particular cultural community: but why should I consider the choices that would be made by individuals similar to me, in a situation similar to mine, as a model for myself as well? I can easily recognize that my personality has taken shape in the context of a particular culture - Italian culture - and tradition, but this does not necessarily lead to the consequence that when I make my own choices as to what course of action to follow or what principles of justice I should adopt, I should automatically be required to make use of the sociological abstraction of the "typical Italian" as a model of ethical virtue, or conceivably even of political wisdom. The mere fact that, prior to any action, I ask myself what I should do implies that the model of the typical Italian does not necessarily determine me. With the same or even greater satisfaction, I might recognize myself in the typical deviant, something which until proved otherwise is an equally dignified sociological abstraction. In fact I could even go so far as to admire and take as a model people who are different from me and, for this very reason, nobler than me.

The sociological abstraction of culture could serve to define my typicalness, but it by no means provides an answer to my ethical and political questions. The mere fact that I can ask myself what I ought to do, and that the presumed concreteness of my culture does not act as a support in so doing, implies that justice and morals presuppose my freedom. The communitarian subject accords with the model of the Phoenician tale: my duties are clear, once I have found the cultural metal of which I was forged. Certainly, communitarians are fully aware that the historical fabric of traditions and cultures leads to the existence of far more than three, nay infinite, metals within the constitution of individuals, and they know that the hierarchical classification of metals varies according to the given tradition. Nonetheless, they maintain that every community can organize its subjects following its own little Phoenician tale^{xxxv}. Such a tale, however, still remains a lie on the moral plane, because by taking for granted the definition of the role and structure of each living being, it denies the very premise of law and morals, that is to say, freedom.

In *Spheres of Justice*, Walzer's work on the problem of distributive justice, the author acknowledges that there is a problem of the subject. Before engaging in a debate on distributive justice, we should determine among whom such distribution is to be carried out. Yet even the mere fact of being a member of the group, which is a prerequisite for distributive justice, is itself a good and therefore has to be distributed^{xxxvi}. This is an unusual situation, for distribution normally takes place within a community that functions on the basis of shared values and concepts of the good. Here, on the other hand, we are confronted with a subject that is external to the distributing community: s/he is the alien asking for the privilege of being a member of that community. Communitarian ideology implies that a certain criterion of distribution must be justified with respect to an individual in the following manner: "We act in accordance with these criteria because they are implied by the axiological horizon of a common culture, which is the one that shapes you as well. That is why you cannot but agree with us." But, at this point, the alien could object: "I am not a part of your community, so you cannot make use of your values to justify to me the choices you have made. What right do you have to exclude me?"

Walzer regards political communities as the fundamental communities, and maintains that although duties towards aliens do exist - the duty of reciprocal assistance, based on the model of the good Samaritan - the citizens of every country have a right to choose which individuals to accept and which ones to reject, albeit within some limits^{xxxvii}.

Membership in a community, Walzer states, inasmuch as it is a social good, is constituted by our conception, and its value is established by our labour and our relationships. Therefore, we must be concerned with its distribution to strangers. It follows that such a choice is also determined by our relationships with strangers, and not only by our attitude towards these relationships, but also by the contacts, connections and alliances we have effectively established, as well as by the results obtained beyond our borders. A limit set on immigration serves the purpose of protecting the wealth and culture of a group, while a limit on emigration replaces this bond by coercion. The fact that an individual has a right to leave his own country does not automatically give him the right to enter another. Immigration and emigration are morally asymmetrical.

The distribution of membership is not totally subject to the bonds of justice. Thus, admission and exclusion form the nucleus of the independence of a community, and underline the deeper meaning of self-determination. Without these two concepts, there could be no community with its own characteristics, regarded as a permanent and stable association of people who have committed themselves to a collective life with reciprocal bonds and following their own special lifestyle. But in the realm of membership,

self-determination is not absolute; it has to do with a political choice and a moral obligation. No community can be half outsiders and half citizens, while still continuing to claim that its entry regulations are acts of self-determination and that its form of government is democratic. The denial of membership is the first link in a long chain of abuse^{xxxviii}.

Now that we have expounded Walzer's theses, which outline the ideal of a democratic community identified as a national state partially open to the external world, let us seek to repeat the alien's question: "Why should your values and your concern for cultural integrity justify my exclusion and also my hypothetical inclusion?" Walzer holds that a moral argument is possible only against the background of a common communitarian cultural-historical horizon. But how, then, can we justify "our" choices to a person who stands outside "our" community?

An alien asking for inclusion in the community of a national state - that is to say, in terms of law, demanding entitlement to all the rights possessed by the citizens of that state - is, by definition, not a member of that community. The communitarians, on the other hand, maintain that a people's moral horizon is forged by the sharing of a common historical-cultural tradition: I know what I have to do because I can identify myself as sharing in a given historical-cultural context. My qualitative identity as a moral subject is defined by the context that has moulded me. The alien, being an outsider, has been moulded by a different moral horizon. Therefore, he is a different moral subject and his thought processes take place within a different contextual framework. I can motivate his exclusion from the rights to which I am entitled with arguments that belong to my cultural horizon but not to his. But at this point, from the alien's point of view - which is different from ours - this motivation is reduced to a mere gratuitous act of will, because by definition he lacks the common background that makes moral debate possible.

If we fully accept the thesis of the peculiarity of each moral horizon, then exclusion, in the alien's eyes, appears to be an arbitrary act, one that has nothing to do with morals or law, but only with strength. If the outsider were to decide to behave the same way, answering force with force, and enter the country as a stowaway, infringing its laws and corrupting its moral - and perhaps even racial - character, he would not be altogether to blame. When faced with a local and particular set of rules and regulations which explicitly provide for his exclusion, and whose horizon of moral legitimization is incomprehensible to him, why would he regard them as the law?

Walzer, however, did not follow this precise line of reasoning: he justified the arbitrary character of inclusion or exclusion in the name of a community's interest in the survival and preservation of its own cultural identity. Now, this interest may concern all or a majority of the members of a community, following a distributive model, or else, collectively, the community as a whole. If we take the first hypothesis as valid, the interest in preserving the culture of the community may well be judged - from the outsider's point of view - to be as arbitrary as any other juridical or moral justification, since it is established by the tools of a culture he does not belong to and whose interests he does not share. In contrast, if we take the second hypothesis as valid, then we must consider communities as moral macro-subjects, actively engaged in their own self-preservation.

In this case, at least one difficulty would be encountered. If we are to see individuals as parts of a superior whole, we must admit that even the outsiders belong to some community as a whole. On what grounds can we establish that our concern for the self-preservation of a community that refuses to include aliens must be given priority over the desire of the alien's community to expand or survive by means of a Diaspora? Only a horizon of universal values would be able to settle this controversy between the two conflicting interests: but a communitarian certainly cannot accept such a hypothesis.

Neutralist liberalism and communitarian liberalism are facing mirror-image difficulties. The former, in order to be applied, needs to specify the subjects to which it applies, while the latter, though applicable on an intuitive level, is unable to offer a legitimization of its rules to any subjects that can be recognized as morally alien, e.g. children, the uneducated, nonconformists and outsiders. However, as we have attempted to show, so-called neutralist liberalism can live with its difficulties and even use them as a tool to strengthen its arguments.

Communitarian liberalism, however, being compelled to translate the apparent concreteness of its protagonists into models, results in contradictory and indeterminate lines of reasoning since its arguments can no longer be based on a systematically metaphysical vision of the world. Within the perspective of the problem of the subject, communitarians must address the task of showing how a coherent ethical system can be supported, without also being, in principle, cosmopolitan. Conversely, liberals must devise appropriate critical tools that will allow practical orientation of the awareness of the intrinsic risk inherent in any subjectively universalistic theory; that is, the risk is that cosmopolitanism may be a deceitful myth that conceals within its bosom the narrow-mindedness of a particularistic vision which is as acritical as it is smugly convinced that it is universally shared by all ostensibly normal persons.

I According to Marshall, contemporary citizenship consists of progressive establishment of civil rights - in concomitance with the birth of the capitalist market, political rights - in concomitance with the development of formal democracy, and social rights - in concomitance with the rise of social democracy. Cf. T.H. Marshall, *Citizenship and Social Class*, now in *Class, Citizenship and Social Development*, Chicago, The University of Chicago Press, 1964, p. 92

II L. Ferrajoli, *Dai diritti del cittadino ai diritti della persona*, contained in D. Zolo (edited by), *La cittadinanza. Appartenenza, identità, diritti*, Roma-Bari, Laterza, 1994, pages 263-91.

III See: M.J. Sandel, *Liberalism and the Limits of Justice*, Cambridge, Cambridge U.P., 1982. We would also like to recall the Italian publications: A.E. Galeotti, *La tolleranza*, Napoli, Liguori, 1994; S. Maffettone, *Le ragioni degli altri*, Milano, Il Saggiatore, 1992, and L. Lombardi Vallauri (ed. by), *Il meritevole di tutela*, Milano, Giuffrè, 1990.

IV Sandel, *Liberalism and the Limits of Justice*, pp. 15-65.

V Sandel's critique has been in some sense confirmed by the authentic interpretation made by Rawls in *Political Liberalism* (New York, Columbia University Press, 1993, pp. 3-46), where the original position was reduced to the expression of some basic political values, shared and plausible from the point of view of multiple overall theories of the good supported by Western societies. One can then legitimately wonder, as does J. Raz in *The Morality of Freedom* (Oxford, Clarendon Press, 1986, pp. 110-133), whether there is any point in resorting to the baroque expedient of the original position and the veil of ignorance, if it has been basically presupposed that some values are not open to question - for instance, pluralism - even in matters concerning justice. So why not induce real individuals to negotiate, then? Why not simply say: "I suggest a model of political justice based exclusively on the fact that some given values are accepted as obvious in Western societies"?

In any case, this kind of criticism is possible thanks to Rawls' tendency to mistake the theoretical validity of his theories for their empirical efficacy. Thus he does not explain the distinction between questions of justification and questions of acceptance. The neutrality of his concept of justice is therefore obtained at the cost of giving up his claim to cognitive validity (see, as an example, J. Habermas, *Reconciliation through the public use of reason: remarks on Rawls' political liberalism*, "The Journal of Philosophy", 92/3, 1995, pp 109-31).

VI Sandel, *Liberalism and the Limits of Justice*, p 14.

VII *Ib.*, pp 15-65.

VIII *Ib.*, pp 133-174.

IX *Ib.*, pp 15-65.

X *Ib.*, pp 30-32. It should be noted that those who maintain that the family paradigm is superior to that of justice - and one can hardly fail to recall the work *Patriarcha* by the absolutist Robert Filmer, against whom Locke took a stand - also maintain that the distribution of roles within the family is something so "natural" and "spontaneous" as to require no formal instrument for the resolution of any possible conflict.

XI. I Kant, *Grundlegung zur Metaphysik der Sitten*, A 393 (transl. by T.K. Abbott., *Kant's Critique of Practical Reason and Other Works*, London, Longman, 1898, p. 9).

XII Plato, *Republic*, I, 354c.

XIII *Republic*, II, 358c-361d. On the meaning of Plato's revision of Herodotus' tale of Gyges, see A. Ophir, *Plato's Invisible Cities. Discourse and Power in the Republic*, London, Routledge, 1981, pp. 10-45. .

XIV *Rep.*, III, 414c-416c.

XV. *Rep.*, X, 617e, transl. by P. Shorey, Cambridge (Mass.), Harvard U.P., 1963.

XVI *Rep.*, VI, 509b.

XVII On the meanings of *einai* in Plato, see G. Vlastos, *A Metaphysical Paradox*, in Id. *Platonic Studies*, Princeton, Princeton U.P., 1981, pp. 46-57; E.A. Havelock, *The Greek Concept of Justice*, Cambridge Mass., Harvard U.P., pp. 233-248; J. Annas, *An Introduction to Plato's Republic*, Oxford, Clarendon, 1982, pp. 190-215.

XVIII See, as an example, Ophir, *Plato's Invisible Cities*, p 157.

XIX *Rep.*, VI, 509b.

XX Many interpreters, though in different terms, have identified a similar conflict in Plato's moral theory: Julia Annas, for instance, has pointed out a contrast between the impersonal character of the formulation of the canon of justice and the need to show the personal interest of the individual in justice (J. Annas, *An Introduction to Plato's Republic*, pages 321-334); Havelock has pointed out a conflict between the radical opening of Plato's moral psychology and the conservatism of his political justice (E.A. Havelock, *The Greek Concept of Justice*, pages 308-323); Ophir highlighted the contrast between the Phoenician tale, intended as an attempt to deceitfully repeat nature, and the suspension of any immediacy characterizing the *Republic* as a textual act (A. Ophir, *Plato's Invisible Cities*, pages 73-103).

XXI As representatives of the two positions, one can cite on the one hand Popper, in the first volume of *The Open Society and Its Enemies, The Spell of Plato*, New York-Evanston, Harper Torchbooks, 1962, pages 138-144; and on the other hand Cassirer, in *The Myth of the State*, New Haven-London, Yale University Press, 1946, pages 75-76.

XXII. Aristotle, *Politics*, I, 1253 a, transl. by H. Rackham, Cambridge (Mass.), Harvard U.P., 1972.

XXIII The reference text will be B.A. Ackerman, *Social Justice in the Liberal State*, New Haven, Yale U.P., 1980.

XXIV The reference text will be M. Walzer, *Spheres of Justice: a Defence of Pluralism and Equality*, New York, Basic Books, 1983. It is important to note that these authors are selected on the basis of a textual criterion, since they both explicitly treat the political aspect of the problem of the subject, that is to say the question of the inclusion criteria for membership in the moral community that is chosen by the given authors as a reference model.

XXV See, as an example, the criticism on communitarianism by J. Waldron, *Particular Values and Critical Morality*, in "California Law Review", 1989, 77/3, pages 562-89.

XXVI B.A. Ackerman, *Social Justice*, page 6.

XXVII *Ib.*, pages 4-12.

XXVIII *Ib.*, pages 327-342.

XXIX *Ib.*, pp. 67-74.

XXX *Ib.*, p. 74.

XXXI *Ib.*, pp. 127.

XXXII *Ib.*, pp. 143-146.

XXXIII As a counter example, we call attention to the recent work by R. Dworkin, *Life's Dominion*, London, Harper-Collins, 1993, which outlines a justification for the pro-choice decision of the American Supreme Court in the famous Roe vs. Wade (1973) case. Dworkin preliminarily distinguishes between two kinds of anti-abortion arguments: the derived argument, according to which the foetus deserves protection since it is a juridical and a moral subject, and the independent argument, according to which the foetus must be protected not as a person, but by virtue of the intrinsic value of life. Dworkin then states that if we define the subject to whom rights apply as a bearer of actual interests, then the immature foetus cannot be considered a subject, since it is not capable of expressing its own interests: therefore, any derived argument that is not founded upon religious conceptions is off the point, from the point of view of the philosophy of law. Independent arguments recognizing the intrinsic value of life regardless of the personality of the foetus are therefore the only ones on which attention should focus; furthermore, here too we must distinguish between religious and secular positions. Human life is the product of the union of two kinds of creative investment: the natural form, that is to say mere creatural existence, and the human form, i.e. that which each person succeeds in making of his existence on the basis of the values and interests held by this person. The religious opponents of abortion have the utmost respect for mere creatural existence, since they believe it to be a gift from God; in contrast, those holding secular beliefs take into consideration both the unborn's possibility of human - and natural - accomplishment and the harm done to the mother, in the case of an unwanted pregnancy, by a life existing merely in the natural state, given that the mother is an already developed human life and thus more deserving of protection.

Both as regards the problem of the foetus's personality and the problem of the value of life, the watershed between those who are in favour of abortion and those who oppose it has a connection with religious beliefs. It follows that the question of the freedom of abortion is a religious matter; therefore, a constitution that guarantees freedom of religion must also and for the same reason guarantee freedom of abortion. For in both cases safeguards must be provided whereby the individual is provided with control over his own body, so that the latter is exclusively subjected to the sovereignty of his conscience.

The keystone of Dworkin's thesis is the assumption that only on a religious basis it is possible to attribute a moral personality to the foetus. By virtue of this contention, he grants philosophical citizenship only to the fragile anti-abortion argument based on the intrinsic value of life as mere creatural existence. Accordingly, freedom of abortion can then coherently be reduced to freedom of religion, a long-standing respected liberal freedom. But the weak point of this framework is precisely the assumption that it is only on a religious basis that the foetus can be recognized as a subject, for the same argument can be developed along secular lines, simply by adopting a different definition of the moral subject. For if we define - in agreement with Dworkin - the moral subject as a bearer of actual interests, we can easily exclude the foetus from this category; however, such an exclusion would be far more difficult if we defined the moral subject as a bearer of possible freedoms, or if we simply adopted the precautionary measure of considering all doubtful cases as belonging to the category of moral subjects, arguing that it is preferable to mistakenly treat an object as a moral subject rather than running the risk of reifying a moral subject. A strong pro-abortion stance - that is to say, a position that does not restrict itself to taking up arms only against weaker opponents - must concede at least the possibility that the foetus is a moral subject that "uses" the pregnant mother's body for survival; furthermore, such a position must also question the moral and juridical significance of the intervention of a third person - the legislator - in the relationship between the woman and the foetus. In this manner, it would become possible, at least when outlining the essential elements of the problem, to give due consideration both to the assumption of the woman's sovereignty over her own body - supported by those in favour of abortion - and the assumption of the moral subjectivity of the foetus - supported by numerous anti-abortion arguments that are not necessarily beyond the confines of the philosophy of law.

XXXIV M. Walzer, *Spheres of Justice*, chapter I.

XXXV See, as an example, M.J. Sandel, *Moral Argument and Liberal Toleration: Abortion and Homosexuality*, "California Law Review", 1989, 77/3, pages 521-38, where the author discusses, on a philosophical level, thorny issues such as the relationship between the law and abortion, and between the law and homosexuality, basing his arguments, in the last analysis, on the case-law of the American Supreme Court and the shared values of society concerning which he provides no arguments. One hardly need recall A. MacIntyre, *Whose Justice? Which Rationality?*, Notre Dame, University of Notre Dame Press, 1988, pages 1-11.

XXXVI M. Walzer, *Spheres of Justice*, chapter I

XXXVII *Ib.*, chapter II.

XXXVIII *Ib.*, chapter II.