INDIVIDUAL, EQUALITY AND LIBERTY:
Towards a ‘post-liberal’ justice

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INTRODUCTION¹

With the publication of John Rawls’ theory of justice, the matter of justice was placed in the center of Political Theory in the end of the 20th and beginning of the 21st centuries. So, we can consider the book *A theory of Justice* ² as a mark in the Political Theory, and a lot of the discipline production, since then, was characterized by a dialogue with Rawls, following or denying his ideas.

Trying to formalize a normative theory of liberal justice, based on the notion of equal liberties, Rawls has got followers and opponents that, in both sides, of applause or critics, vary between extreme points of the political range. Maybe, that is caused by his second principle of justice, the “difference principle”, which secures only the inequalities that generate maximum benefits to the poorest.

The enormous ambiguity of rawlsian theory of justice is exactly about this point. Would be the difference principle a call to an almost socialist income distribution – seeing that accordingly a particular interpretation, a very little portion of the great disparities involving us contributes to the poor’s welfare? Or would be this principle, following another particular interpretation, just a sensible defense of the capitalism normal operation – which constant production development, that had grew up the standard of living, needs exactly the structures of incentives, tested and judged by the experience, that we have nowadays? To understand completely the deep indetermination in the soul of Rawls’ construction, it is enough to note that it was applauded in the extreme of left by John Roemer, and in the extreme of right by Friedrich Von Hayek, which one affirming that his own message agrees with the Rawls’ one (ANDERSON, 2002, p.348).

Nevertheless, according with was said before, the group of Rawls critics is equally diversified. By one side, Rawls was attacked by radical liberals that accused him of favoring excessively the equality, in prejudice of liberty. By another, there are authors that, between Kant and Hegel, chose the last one to confront de ‘kantism’ of Rawls’

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formulations, claiming for more equality against the exacerbation of individual liberties in his theory of justice. \(^3\) These last ones are communitarians and multiculturalists that challenge the kantian foundations of the liberal thought and, consequently, the Rawls’ thought, denying the validity of the individual transcendental subject that bases them. Against this transcendental subject, the communitarians and multiculturalists argue that a concrete cultural societal order is the only possible source of justice parameters.

However, even with a distinct philosophical starting point, the Rawls’ Hegelian critics present us a frame of normative references that is characteristically liberal, even if it is a communitarian based liberalism. It is in that sense that Philip Selznick talks about a “communitarian liberalism”, using the communitarian arguments not for a wholesale rejection of liberalism, but for a reconstruction of its ideas and policies. According to him, the ideals of equality, freedom and rationality of classic 18th and 19th centuries’ liberalism – the real starting point of the liberal thought – have had a fundamental importance for the social progress and moral welfare, a central contribution to the humanity cause and can not be so easily discarded (SELZNICK, 1998, p.3-4). This author argues that few among us would like to abandon or break these elements of the liberal thought (Ibidem, p.6).

This feeling is shared by Norbert Bellah, in his defense of a democratic communitarianism, that, according to him, should be based on the valorization of the sacred character of the individual, an important value not only for the liberalism, but also for the world’s greatest religions and philosophies. He argues that any factor that can oppress the individuals or break their free development will not be only against the liberal premises, but also against the democratic communitarianism as characterized by him (BELLAH, 1998, p.18).

It is equally in these terms that Thomas A. Spragens Jr. recognizes in the libertarianism, and not in the liberalism, the real counterpoint against the communitarian theories. According to him, there is nothing illiberal or antiliberal in the ideas and directresses of communitarianism. In another direction, the communitarianism tries to recover an important and valid dimension of the liberal thought that libertarian distortions are

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\(^3\) An example of this is the use of Hegel by Taylor in *Hegel: History and Politics* (1984).
putting aside. He says that it is not necessary substitute the liberal texts by collectivists, socialists or reactionaries works to find a concern for the community, participation, civic virtue and legitimacy of a collective enterprise. These interests are well presented in the works of Locke, Mill, Madison and also Adam Smith. The liberalism, he concludes, in its best, never had become victim of the individualist simplification proclaimed by the libertarians. That is recognized by what Reinhold Niebur remembered us few decades ago: the community requests the liberties as much as does the individual, and the individual requests the community more than the bourgeois thought has understood (SPRAGENS Jr, 1998, p. 39-40).

In the multiculturalist side, we can see the same kind of arguments in Kymlica’s defense of a liberal multiculturalism, wherein the multiculturalism is understand as a concept guided by the principles of equality and freedom (KYMLIKCA, 2007, p.7.). This multiculturalism, he says, is easier to be adopted where the liberal democracy is already fixed, where the state of law and the human rights are protected. In the countries, continues the author, where these basic liberal foundations are not present, like, according to Kymlikca, Latin America, and, specially, Guatemala (ibidem, p. 150-151), some kind of democratization and liberalization will be necessary before the implementation of this type of multiculturalism makes sense.

What becomes visible in the references above is a ‘constraint’, or a great ‘shyness’ when the possibility of criticizes liberalism consecrated dogmas appears; a fear of sounding politically incorrect, or be justifying conducts condemned as barbarian or despotic, just because the challenging of the weight of some liberal institutions.

This kind of behavior, timid in the presence of liberal doctrines, but equally desirous to criticize the liberal foundations, brings up to orders of questions. Firstly, why, to increase the society fairness, should be so important to challenge the liberal premises and not just follow, for example, the ideas of John Rawls? And, secondly, why to challenge deeply the liberal premises looks like approach ourselves of the unfairness much more than the fairness, even if, nowadays, liberal orders are not helping to become fairer the societies guided by them?
Obviously, these two orders of questions need complex answers that are unreach able in few pages. These questions are able to mobilize numerous authors and theoretical lines of social sciences, and, yet, not bring up satisfactory answers. The objective of this paper is only to bring up modest steps in the tracks of these answers, casting some flashes of light above their fog. However, these tracks are the only way that can guide ourselves towards a ‘post-liberal’ theory of justice, that is, a theory of justice able to go beyond the liberalism, but without abandon what have it conquers so many minds and hearts.

To reach its objectives, the research will begin for the first line of questions explicated above, emphasizing the limits of a liberal order as a fair order. After that, it will seek, by a ‘protagonism of facts’, the type of sociological composition that claims for some liberal premises as justice requirements. Following, it will begin a new line of critics about the liberalism, based on some typical sociological concerns. In the end, it will present summarily the directions where, on my own view, the thoughts of some of the more influent liberal authors of our time should be overcomed for a society configuration that could makes justice more effective.

1. WHAT IS JUSTICE?

To challenge the liberal justice implies clarifying what is considered justice here. In my estimation, we can say that justice is a discourse wherein is fixed a level of equality for certain entities exercise their freedom. This is a formal statement, that I think is able to embraces many theories about what is just, that can be compared with some social orders, making possible consider unjust some situations that not fit these theory contents.

4 The expression is a reference of Gramsci’s treatment of the Passive Revolution, wherein the protagonists are the facts, and not the individual men. That is about how, under a political involucre, necessarily, the fundamental social relations change and new political forces appear and develop themselves, and, therefore, influence, indirectly, with slow, but unstoppable, pressure, the official forces, that change themselves without noting it (GRAMSCI, 1999, p. 328).

5 The notion of discourse employed here is the Foucault one, developed in Archeology of knowledge, that is, a set of statements linked by their regularity in dispersion (FOUCAULT, 2007, p.29-30).
But to be a real theory of justice, the discourse should do something more than just fit substantially the formal requirements of the original statement: it should fit these requirements in the exact order and should permit its own reflexivity. That is, a theory of what is just needs define firstly the ‘who’, subject of the theory, then, the level of equality between these ‘who’, for, after that, offer any recommendation about their liberties, since this liberties are enough to permit the revision of the first two requirements.

With that, we have that a theory of justice has, as its requirement, a plural ‘who’ (like nations, beings, human-beings, adult human-beings, male adult human-beings, etc.); as its object, some ‘equality’ between these ‘who’ (like equality before law, resources equality, income equality, material equality, etc.); and, as its objective, these ‘who’ freedom, necessarily constrained by the prior equality requirement, but necessarily able to allow its revision (for example, transforming the exigency of the equality before the law in a exigency of resources equality, or vive-versa) and also the revision of the first ‘who’ requirement (for example, expanding the equality before law to some others ethnical groups, or restraining it for some age-group or friend nations).

So, the concept of justice formalized here desires the status of a category able to embrace a long range of conceptions of justice. It is relativist to become sociologically useful. Of course, it does not have normative intentions. The objective is treat as possible justice theories notions of fairness that insinuate themselves in the most varied cultural contexts, diverse in space and time, and a time that can embraces the future. In such case, could be a valid theory of justice a discourse establishing the equality before law for white men between twenty and sixty years old, as well would be a valid theory of justice a discourse wherein is necessary the equal inviolability of any kind of natural-being. If the research seeks challenging a discourse of justice hegemonic in our time and space, it looks like important to me, begin with an extremely relative concept that could block any involvement with the present and the theory that we want to criticize.

Nevertheless, our concept of justice has limitations: it is not any discourse that can be considered a theory of what is just. Beyond fit the three requirements mentioned, a theory of justice must fit them in an exact order. Then, a theory of justice has its gravitational center in the matter of equality. If its first requirement, without further
appeal, is such an arbitrary choice, and its objective of freedom and reflexivity is absolutely conditioned by the matter of equality, we have that that matter is its central issue. Not as free as the choice of entities that the justice is addressed, and not so constrained as the liberty of these entities, equality becomes the focus of any theory of what is justice.

Like Amartya Sen points out, the most important ethical theories of social ordainment share an approval of the equality in some focal variables, even if the selected variables differ between the theories. There is a reason for this omnipresent egalitarianism: the ethical plausibility is hardly obtained if we do not give to any person equal consideration in some important field in a particular theory. Even though, continues the author, it should be extremely ambitious to consider this a logical necessity or a part of the moral language, it is hard to see how an ethical theory can get social plausibility without extend the equal consideration for all in some level (SEN, p.31-33). A theory can accept the inequality about a lot of variables, but to defend these inequalities, probably it would be hard to escape to the necessity to relate them to the equal consideration for all in some properly substantive way. Maybe, he concludes, this feature is related to the imperative that an ethical reasoning about social ordainments must be, in some sense, believable to the others – potentially, all the others. The question, ‘why this system?’ should be answered like addressed to all participants of the system (ibidem, p.48-9).

We can addict to the lesson of Sen the words of Ronald Dworkin, who says that any government is not legitimate if do not manifest equal consideration about all the citizens whose it requires fidelity and its sovereignty. The egalitarian consideration is the sovereign virtue of the political community – without it, the government is no more than a tyranny – and when the nations’ wealth is so much unequally distributed, so its equal consideration is putted in suspicion, because the wealth distribution is a product of a legal order: the wealth of the citizen depends a lot of the laws of the community – not only the laws of property, robbery, contracts and infractions, but also the laws of social welfare, taxation, political rights, environmental regulation, and almost all. When the government promulgates or maintains a set of laws and not another, continues Dworkin, it is not only possible to foresee that the life of some citizens will decrease because of this choice, but also predict in some degree, which citizens will be more affected. In the
prosperous democracies it is foreseeable that always when the government retracts or
does not expand the social welfare programs, it affects especially the life of the poorest.
We need to be prepared to explain to who suffers in this manner, in what sense,
nevertheless, she was treated with the equal consideration she deserves (DWORKIN,

To this, Dworkin addict the conclusion that if the equal consideration is a requirement
of the political legitimacy, we cannot put aside the matter about what the equal
consideration claims. Would be enough the community warrants a minimal level of
nutrition, habitation and medical care and, so, does not concern about the fact that some
citizens have so much wealth than the others? We should ask: this policy would attend
the claim for equal consideration for who cannot be able to dream about the life that
some of their partisans take for granted? (Ibidem, p.XI)

As the end of the paragraph above reveals, the central problem of the liberalism – even
in more egalitarian versions like the Rawls’ one – is that the attention that it pays to the
matter of freedom, can make its doctrines run over the main concern of a real theory of
justice: the equality. Although the liberal theories of justice are real theories of justice –
they always submit the exercise of liberty by some kind of equality (generally equality
before law) – to take freedom to the utmost, these theories give equality extremely
narrow boundaries. The level of equality required by the liberal doctrines cannot,
because of the close contact between the life spheres where equality can be claimed,
work in one of these spheres, due to its inaptitude in dealing with the others.

About, for instance, the relation between liberalism and the isonomia (equality before
law), the isogoria (equality of conditions to take part in the pubic life), and the
isomoiria (equality of conditions to take part in the wealth distribution), José Eisenberg
affirms that the political liberalism, when and where it has ruled in the last two
centuries, failed to produce the three. About the first, it never had been able to produce
the effective inclusion of everyone as a citizen with civil rights and the mutual tolerance
required for any complex and plural society. About the second, so far where the political
rights were universalized, the political apathy has rounded like a ghost and, facing the
liberal presupposition that the vote is a right, not a duty, nearly always has affected the
less fortunate people of those societies. At last, it is almost unnecessary point out the
liberalism obvious failure to universalize the economical conditions claimed for the political citizenship full exercise (EISENBERG, 2003, p.203).

On account of this, nevertheless the strength of some liberal theories of justice like the Rawls’ one, the need of think about a ‘post-liberal’ theory of just is not related to the ‘non justice’ of these theories – I do not reject that they are valid theories of justice – but related to the unfairness of the societies ruled by its dictates. That is, the level of equality claimed by a liberal theory of justice is one that does not allow its own consolidation: a lot of liberal societies do not get the minimum level of liberal equality just because they limit the equality at this minimum. For example, instituting as an equality parameter the equal right of political participation, but rejecting as unjust any search for material equality, a society can see frustrated the equal political participation because of the extreme material inequalities separating the poorest people from the public arena.

If that is it, why do not formulate a theory of justice strange to the liberal prescriptions? Why do not institute, as the entities sharing the effects of the justice theory, not the liberalism particularized individuals, but larger human groups? Why do not claim, in prejudice of liberty, a material equality among these entities? Why do not just ignore the dimension of liberty, if this dimension is only the third and residual relevant dimension of justice?

The liberal answer that denies these questions finds its foundation in the inviolability of the dignity of the kantian transcendental subject, particularized and autonomous. But could be possible to defend the liberalism without this kind of metaphysical arguments? It is possible for who abandons the kantian metaphysics, to defend liberal postulates? I believe, nevertheless, that the answer to these questions is yes, and that is the point to be discussed now.

2. THE JUSTICE AND THE INDIVIDUAL

The first field that needs to be filled by a discourse that wants the status of a real theory of justice is the one related to the entities subjected by the theory’s dictates. However,
that is a field generally little discussed, or even presumed. One of the symptoms of the liberal supremacy is that presumption is falling on living human beings, particularized in autonomous individualities. But this kind of answer to the question about what type of entities should be treated as equal in a theory of justice is not so obvious. Otherwise, isolated from the metaphysics of Kant or Descartes, it can be an absolutely nonsense. And there are a lot of examples of situations where the individual autonomy was not a priority when compared with larger entities like families, tribes, divinities, social classes or nations. So, why nowadays there is a tendency to consider unjust take these other entities as subjects of a theory of justice, depriving the place of the individuals?

As was said before, an easy answer to this question is to appellate to a discourse about nature, wherein the basic unity of this nature is an autonomous human being, able to knowledge that, so, should be the central reference in the ordination of this nature. But is yet possible, for who rejects this kind of metaphysics, to found a theory of justice in the typical autonomous individual of the liberal conceptions?

My answer to this question is that it is not only possible, but necessary, if the alternative foundation of the theory of justice was searched in a materialist, communitarian and based on the protagonism of facts argumentation. It means that, more than the metaphysics, the empirism claims for the protection of this individual. Talking briefly, you can do not agree with the thoughts of Descartes and Kant, but you need to assume that such thoughts had got a deep impact on the ‘facts world’ or, at minimum, were deeply impacted by this same world.

For basing the importance of the liberal autonomous individual in a materialist and communitarian manner, we can start with the reflections of Marcel Mauss, beginning with a declaration of him, absolutely skeptical about the more common justification of liberal thesis: the liberty as a possibility of choice.

According to Mauss, the notion of liberty – possibility of choice – does not appear immediately in history. It is only clarified with the development of Law and the notion of civil and criminal responsibilities. It is strange for the early stages of Roman law. But there is more, and is just in a very recent date that the notion was elaborated in the patristic, in the dogmatic, in the christianism, essentially after the raise of
predestinationism and the notion of original sin, and, above all, after the appear of individual conscience in the metaphysical subject. So, the notion of liberty, properly said, is linked with the development of the notion of individual, as a subject of the law, the moral and the religion (MAUSS, 2005, p.375).

Then, not only the notion of liberty, but also the notion of individual, basic elements of the liberal arguments, if we accept Mauss’ thesis, are not linked with humanity as a trans-historical entity: they have their origins, on the contrary, findable in time and space. Mauss theorization about the development of the notion of person and self shows how this development finds different stages in different cultural landscapes, emphasizing the importance, for our actual notions, of the Roman law, the stoic moral, the christianism, the renaissance and the philosophies of Descartes and Kant. The category of self, he says, far from being a primordial and innate category established since Adam in the depths of human being, continues until nowadays becoming slowly built and cleared, identifying itself with the psychological knowledge (Idem, 2007, p. 367-97). This category was formed only among us and even its moral strength, the sacred character of the human person, is challenged by an Orient that never reach our sciences, and also by countries where this principle was found (Ibidem, p. 397).

But to accept the Mauss’ thought has nothing to do with denying the notion of liberty, only because it is a recent notion that is not an extemporal sign of humanity. It is the author himself who repels this kind of conclusion, when he says that a category of thought is not less true just because it has appeared late in history. It could be exactly the contrary. We would not be so far from Hegel and Hamelin, thinking that the most fundamental ideas are, in general, the last to be discovered, those which the mind have kept more time to explain (MAUSS, 2005, 375)

The way of Mauss’ reflections is not so different from the Habermas’ one, when he searches foundations to his ‘post-metaphysical’ thought. At least, in its more vertical historical dimension, because Habermas increases this with a more horizontal process of individuation by socialization, trough his use of social psychologist George Herbert Mead’s thought.
Following Habermas, in the lesson of Eisenberg, we can say that the aggregation between the linguistic turn and the priority of phenomenology results in a new concept of rationality that takes away of reason its transcendental character. Replacing an a-historical reason, based on the human mind inherent faculties, a concept of situated and concrete reason arises immersed in concrete human practices where it reveals itself: the social action and linguistic interaction. So, the notion of situated reason is an answer to the metaphysical idea of transcendental reason. It implies a historicization and individuation of the transcendental subject, displacements putted into practice by the sciences of the symbolic and culture. By one side, continues Eisenberg, it is a heideggerian movement with the concept of *Dasein*. But the problem of this movement is to constitute the situated reason in a plurality of isolated individual atoms that do not allow us to understand how an inter-subjective world is built. Only with Mead and his model of individuation via socialization Habermas has seen an adequate solution for surpassing the concept of transcendental reason with the concept of situated reason (EISENBERG, 2003, p.33).

Habermas have seen in Mead the merit of putting in relief the fact that the individuation is not the inner realization, solitary and free, of the subject acting spontaneously, but a process mediated by the language of socialization and the simultaneous constitution of a life history, conscious about itself. The identity of socialized individuals is constituted simultaneously by the medium of inter-subjective linguistic understanding and the medium of intra-subjective biographic understanding, constituting the individuality with conditions of inter-subjective recognition and intra-subjective self understanding (HABERMAS, 2004, p. 192).

Therefore, in Mead’s psychology, Habermas finds, sketched, the unique attempt to reproduce in the conceptual plan, with outcome chances, the full meaning of the signifier individuation. It is like that because Mead links the differentiation of roles structure with the building of conscience and the development of autonomy of individuals socialized in conditions increasingly differentiated. Like the individuation in Hegel depends on the progressive subjectivation of the Spirit, the individuation in Mead depends on the interiorization of behavior controller instances that, in this way, migrate by the exterior to the interior. When, in the process of her socialization, the growing up subject begins to assimilate what the referential persons expects from her, and, hence,
using abstractions, she begins to generalize and integrate the multiple expectations, even the contradictory ones, it is constituted a inner center of self orientation of a behavior that the subject is able to guide individually (HABERMAS, 2004, p.191-192).

So, side by side the winner march of the liberalism as political thought, another march, that reinforces the first and is also reinforced by that, follows the same track: the march of individuation. In the historically vertical way of the Mauss’ thesis, or in its horizontal continuity took from Mead by Habermas, what we can observe is the concretization and stabilization of the category of the individual. Hence, if this category is not exactly a foundation of the social reality, it is still fundamental to that reality. Therefore, everywhere a human social group has not reached this level of individuation, we will have a society free to decide about the justice indifferently to any individuality. However, where, on the contrary, the march of individuation has reached intense levels, the individual will be a reality that needs to be considered in any coherent theory of justice of this human group. And the notion of individual of this theory will be someone closed to the liberalism’s one.

Then, in a context of extreme individuation, a theory of justice that consider, as its fundamental entities, individuated and autonomous human beings will find more resonance in the society wherein it is applied. Then, theorizing about the level of equality among these entities, that theory of justice can not let these human individuations be destroyed in favor of larger entities like nations or social classes, or be denaturalized by an extreme restrain of their choices and movements. The lessons about how to keep inviolated the ‘individuated subject’ are the lessons to be incorporated for liberalism by any post-liberal justice.

3. INDIVIDUATION AND INDIVIDUALISM

Nevertheless, the liberalism is not only protecting the individual. Beyond protect the individuation, it is benefitting a correlate phenomenon, some kind of degenerated individuation, unable to find the same societal foundation, due its offensiveness to the community. That is the phenomenon of individualization, which does not only differentiate the community members in autonomous entities, but also weakens the
communitarian links among them, corroding the social fabric and generating atomized individuals. At this point we are in the presence of the individualism, a traditional concern among the society studiers, always treated as a social pathology of the worst type.

In the classical Sociology, Durkheim was who had made explicit this point. Facing the social transformation that he was observing, this author has diagnosed the dangers of atomization coming from the social differentiations in progress. But he also has observed that the social solidarity was possible in another ways. On account of this, he brings up to discussion the organic solidarity – derivative from the interdependence among differentiated parts – to surpass the lack of an earlier mechanical solidarity – derivative from a greater social homogeneity. With these concepts, seeing in the social disaggregation on the lack of social solidarity the cause of anomies like high criminality rates, Durkheim seeks ways to recompose this solidarity, finding, for instance, in the professional corporations, social institutions that could act decisively in that recomposition. ⁶

It is this same program of research that, a century later, Castel recovers in his analysis of the social question metamorphosis – exactly the matter of keep the sociability in contexts of exclusion and extreme individuation. So, the ‘social question’ is relative to a fundamental aporia in which the society experiences the enigma of its cohesion and tries to conjure the danger of its fracture. That is the challenge, presented to all societies, of being a group linked by interdependence relations (CASTEL, 1998, p.30). Describing his own work, Castel points out that the notions he tries to develop – the negative individualism, the mass vulnerability, the social invalidation, the defiliation, etc – make sense in the frame of the problem of integration, or anomie, being a reflection about the conditions of social cohesion based on an analysis of the dissociation (Ibidem, p.23).

Sticking out the perverse influence of the negative individualism for the social cohesion, that is, the individualism that is not linked with the valorization of the subjective, but with the deprive of collective references, Castel reach the argumentation made here about the problems for the societal solidarity caused by what I have called

individualization, different from the individuation. The consequence is a deep criticism about the liberal purposes, unable to deal with the social question, what makes him appeal to the State as a privileged actor for that.

A social policy without State is possible, Castel says, and the liberalism has created it. The social assistance could not be a matter of law, but a matter of moral, out of the State regulation and legislation. It should not legislate about the costumes, and the law should regulate only relations among equals, like the model of contract, and not relations among unequals, like relations of assistance: the charity, even possible, should not be in the legal charity formula (CASTEL, 1998, p. 302-304). The social policy professed was not a government responsibility, but a responsibility of the enlightened citizens, the upper classes that should assume voluntarily the exercise of lower classes’ protection (ibidem, p. 314), including the employers assuming the protection of the employees.

However, the construction of social policies without the State generates an impasse. As Castel asserts, with moral essence, its success is based in the people adhesion to the values proposed/imposed to them. But the workmen’s world elaborates its own programs that came into conflict with this conceptions based on the negation of the other. Refusing the partnership with the State, he continues, these policies had left dominator and dominated face to face without mediations. Hence, the forces relations could be inverted and who has nothing to lose, could decide get everything. What could stop it? Without doubts, he concludes, the State could, but not the liberal minimum State. In the name of social peace, it should be necessary the State be endowed with new functions to control this destructing antagonism (Ibidem, p. 344).

The social disaggregation is a problem to a theory of justice, even if this theory is based on autonomous individuals. And it is not only because these autonomous individuals have foundation in the collective, as explained before, but also because of one of the justice discourse’s requirements, not yet sufficiently explained: the requisite of reflexivity.

The reflexivity is directly related to moments of critics. Luc Boltanski and Laurent Thévenot say that one of the critical moments’ characteristics is its reflexivity. People in ordinary relations, doing things together – for example in politics or work – and that
need to coordinate their actions, when notice that something is going wrong, that they can not continue, that something needs to change, they are in a critical moment, characterized by reflexivity: the possibility of transformation, using elements present in the same context (BOLTANSKI; THÉVENOT, 1999, p.359).

To be coherent, we need treat a theory of justice as a reflexive discourse, because we know that these theories change themselves in time, as the Rawls own theory demonstrates well. There are situations when it is necessary that a discourse about the justice change itself to be adapted to the society where it is applied. As we have seen, these situations claim for a source of changes present in the own context, and, as a transformation needs new elements, that, obviously, is not part of the modified discourse, we conclude that these changes come from another presences in the context. So, the reflexivity requires a confluence of different discourses and a circulation of people and objects able to carry and connect these discourses that only the sociability and some freedom are able to provide.

Thus, the injurious effect of the individualism for a theory of justice is its feature that corrodes the sociability that, consequently, is equally corrosive for the reflexivity, as we have seen, essential for a theory about what is just. Therefore, if a theory of justice that consider seriously the process of individuation needs to assimilate the liberal lessons about how to conserve the autonomy of the individuated subjects, it also needs to be concerned for this individuation does not degenerate in individualization.

And, about that, the liberal theories have offered few precious clues, focusing themselves at liberty, in prejudice of equality, and at people rights, in prejudice of people duties. On the contrary, the program of liberal doctrines for their own justifications, wherein the society come from the individuals, and not the opposite, promotes the individualization more than breaks it. So, a theory of justice that seeks being reflexive and not self-destructive, needs to pay more attention on the ‘post’ of the ‘post-liberal’ project, going beyond the liberalism to search the tools that able to block the individualization movement latent in processes of individuation.
Among the liberal doctrines in season nowadays, the less capable to offer resistance against individualization processes and to find foundations out of the metaphysics of a transcendental subject is the one called libertarian, or ultra-liberal, that has, as an example, the theory of Nozick. If, for instance, Castel brings up, as a possible counterpoint to individualism, the assumption of the social question by the State, Nozick annuls this possibility with his exigency of a minimal State. If in Rawls’ theory a principle of redistributive justice could diminish the disaggregating tension of an unequal society, in the ultra-liberalism the impossibility of any redistributive policy also undermines this chance.

Nevertheless, if a liberalism like the Rawls’ one can easily find basis in process of individuation by socialization, and so on, can adequate itself to a lot of social realities even when abandons a metaphysical foundation, a liberalism like the Nozick’s one, if looks for foundation in communitarian basis, become incoherent in a lot of situations where the individual freedom is less obstructed by the State than by particulars, which economic superiority give them means of coercion more efficient than the fragile State’s ones. It is the case of Brazil, where institutions like slavery and latifundium are founder realities of its contemporary social configuration, what makes authors with clear liberal inspirations, like Oliveira Viana, defend, empirically based, the use of the State apparatus to spread and consolidate the individual liberties.

In this way, more egalitarian liberal theories, like the Rawls’ one, present themselves as a better starting point for a post-liberal justice than an ultra-liberalism like the proposed by Nozick, that just increases the dangers of an atomizing individualism and an inequality unable to consolidate any theory of justice. The Rawls’ distributive justice principle, interpreted in a redistributive way, for example, could be a better starting point for a theory of justice wherein the equality can be theorized in less formal and more material frames.

But definitely, it does not like being the Rawls’ intention, as he demonstrates in works where he clarifies his theory of justice, like *Justice as Fairness: a reformulation*. In this work, that author, trying to make clear the political nature and liberal objectives of his theory, says that take the basic structure as the primary object of a justice theory allows us to seeing the distributive justice as a case of backstage pure procedural justice: when everyone follows the public recognized rules of cooperation, the specific resultant wealth distribution need to be consider a fair one. That, he continues, allows us to keep distance from the giant complexity of the diary life transactions and discharge ourselves of follow every change in the relative position of specific individuals. According to him, the society must be a permanent scheme of cooperation along time, without any specific begin or end that is important to the political justice; the justice principles determine a kind of backstage justice that is independent of particular historical conditions (RAWLS, 2003, p.77)

So, entering in the theme of redistribution as a manner of breaking the social disaggregation and allowing the effectiveness equalities in another spheres, like the equality before law, is something that needs to take us beyond, not only the ultra-liberals, but also beyond Rawls. However, touching the theme of redistribution nowadays lead any research to another important discussion, specially because the work of Axel Honneth. This discussion is the distinction, and, consequently, the axiological choice, between redistribution and recognition. And, at this point, it looks like impossible to escape from this debate.

Axel Honneth is considered the main intellectual heir of critical theory, that began with the work of the earlier Frankfurt School thinkers, and that found in Habermas one of its more fecund moments. However, even if the questions that Honneth brings up are important, I think that is not fair to consider him an heir of the critical theory. His critics to his contemporary society are not so global as the Horkheimer and Adorno ones, and even Habermas: really, Honneth’s critics are narrow critics trying to spread over more people the gains and possibilities brought by capitalism, liberalism and democracy. That is what becomes clear when he establishes, succinctly, why the moral infrastructure of the liberal-capitalist modern societies can be taken as a legitimate starting point for a political ethics.
According to him, if the social integration occurs establishing recognition relations where the subjects are confirmed in different features of their personalities and, by this way, they become society members, then the moral quality of that social integration can be increased by the enlargement of the recognized parts of personality, or trough the growth of individual inclusion, that is, by the individuation or by inclusion. Therefore, it looks like justified comprehending the movement towards the modern liberal-capitalist society as a moral progress, because its differentiation of three spheres of recognition of love, equality before law and self-realization went ahead simultaneously with the augmentation of social possibilities for individuation and social inclusion (HONNETH, 2003, p.185).

So, Honneth can be considered a liberal theoretician, important for challenging the classic claims for material redistribution with the claim for recognition, according to him, more important, linked with the society recognition of the dignity of the individual choices still treated as pathological or deviant behaviors. Beyond this, he insists that there are not two types of social claims at the same level, but that the claim for redistribution is only a specific type of the main claim for recognition (Ibidem, p.113).

Nevertheless the importance of pointing out the problems caused by the non recognition of some social life species, and of assuming that this problems are not resolved with only a simple income redistribution, I think, however, that Honneths’ liberalism do not presents us a good starting point for a post-liberal justice.

At first, he does not make clear how to solve the aporia generated by the fact that, sometimes, to recognize the value of some types of life, we need to not recognize another types based on the denying of the first, the case, for example, of do not recognize discriminating religion forms to recognize the forms discriminated by that religion. And the evolutionist attitude presented by him as an answer to this kind of critics to his theory ⁹ does not help us, because it presumes the recognition of some

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⁹ An example of this critic is in Nancy Fraser, Social justice in the age of identity politics: redistribution, recognition, and participation. (2003, p. 37-8), and the Honneth’s answer is in the second part of the same book: Redistribution as recognition: a response to Nancy Fraser (2003, p.171-2).
forms of life that would become innocuous any struggle for this recognition, already existent.

At second, even if we admit the way the author makes redistribution a type of recognition, I think it is possible, inversely, to make recognition a type of redistribution. For instance, if, denying Honneth’s evolutionism, we accept the recognition claims of groups which recognition implies the non recognition of others, we can understand this displacement of recognition as a redistribution of political power, or redistribution of society’s symbolical material elements, because the recognizable social identities are registered in signs and symbols with material existence, fixed on objects that, redistributed, maybe could change the configuration of what forms of life are recognized as rightful. In the end, to eclipse the redistribution into recognition, like Honneth does, looks like fall into the same tautological manipulation so well pointed out by Nancy Fraser. And yet, accept that some problems are unsolvable by income redistribution do not means that they are not solvable by other forms of redistribution, on other spheres of justice, what becomes visible, for example, in Walzer’s theorizations about a complex equality.  

At last, even if we admit the importance of an existence recognized as valid, we need to admit that, before valid, this existence, forgive me for the tautology, is an existence and, to exist, before anything, it claims for materiality, only possible, forgive me for the tautology again, by material means. If Honneth recognizes, in the spheres of recognition that he proposes, a cure for possible psychological and social deaths, he forgets to point out the cure for the more elemental physical death. By the way, about this question, looks like more sensible to eclipse the recognition under the redistribution, because, in situations, for example, of starving, until nowadays abundant, to admit that a claim for recognition fills every time the first place before claims for redistribution could be rash. Once again, the Brazilian case can serves as an example of why do not start from some theorizations to search for new conceptions of justice that able to attack firmly some situations considered again and again as unjust.

On account of this, a frankfurtian Honneth’s antecessor maybe can offer a better starting point for a post-liberal justice. I am talking, obviously, about Jürgen Habermas.

For some authors like Eisenberg, Habermas is a liberal thinker. To be more exact, the most complex liberal thinker of our time (EISENBERG, 2003, p.19) and the highest point of the liberal intellectual reflection. I think Habermas really accept easily some liberal presuppositions, what is clear when he says that the public and private autonomy of citizens are cooriginal and presuppose each other (HABERMAS, 1998, p. 84 and Idem, 2004, p. 23-4, among others). However, to assume these premises as foundations of his thought does not mean that they are the center of his argumentation. Inclusively, as we have seen, for Habermas, it is not the case, like on liberalism, of the prevalence of the private autonomy before the public one, but the interdependence between them. It is not worthless that Eisenberg, after identifying Habermas with the liberalism, says that his liberalism is an antiliberal one (EISENBERG, 2003, p. 29).

Nevertheless the provocative strength of Eisenberg’s terminology, it does not looks like more than a contradiction. On my own view, when embraces some liberal presuppositions, but theorizes beyond then, being concerned about, for instance, the communicative potential in the social relations of the world of life and its importance for political legitimacy, Habermas would be better associated with a post-liberalism, as I have defined it. That is, if Habermas admits the liberalism in some way, but tries to go beyond it, theorizing about, more than about only individual liberties protection, the use of public reason and the possibilities of a interpersonal communication less deformed by systemic factors, we can consider him a typical example of post liberal author: an author that does not put aside the liberalism that protects the individuation, but that tries to warrant this individuation also from the dangers of individualism and social atomization.

Inclusively, it is criticizing the liberalism that Habermas settles his notion of cooriginality and mutual presupposition of public and private autonomy. Detaching that on liberalism the public autonomy, even when estimated, appears as just a mean to fulfill the more fundamental private autonomy, Habermas set up his ‘kantian republicanism’, starting from another intuition, that is the fact that no one can be free scarifying the freedom of another one. By the fact that people only can individuate
themselves by socialization, the freedom of one person is linked with the freedom of all the others and not only in a negative manner, through mutual limitations. Correct delimitations, he continues, more than that, are the result of self-legislation exercised on group, by authors of the law that feel themselves individually linked as its source and receiver. Because of that, the use of public reason legally institutionalized in the democratic process presents here the key to the warrant of equal liberties (HABERMAS, 2004, p. 123)

However, if the Habermas’ theorizations can be considered post-liberal formulations, it does not mean that Habermas resolves, satisfactorily, the matter of a post-liberal justice. Since, in the end, the solution that he finds for the matter of justice is not so different than the liberal one: to not interfere so much on the liberties of a plural society, the justice needs to be only procedimental. And, to assure that freedom and that procedure, the justice, in what it can be substantive, will not be so different from the minimum of liberalism. Without more substantive and equalitarian prescriptions, a justice inspired on Habermas can fall in the same liberal trap of, requiring so little, do not get neither the little that it requires. After all, the free communication among subjects that enjoy the public autonomy – essential for the political argumentative foundation in Habermas – also looks like easily trappable in a situation of extreme material inequality, which is possibly transportable to a hierarchy in the positions of the speech acts’ authors.

So, even if Habermas presents us a thought, in some direction, clearly post-liberal, it still looks like absolutely necessary think about that post-liberalism in a way more ‘post’ and less ‘liberalism’ than the Habermas’ one, specially on situations of extreme material inequality as, for example, the Brazilian’s case. At this point, I agree with Eisenberg, when he says that the habermasian liberalism is better than the Rawlsian one for being more republican and democratic, and better than the communitarian one for being more adapted to the complex and plural societies (EISENBERG, 2003, p. 45). But I also absolutely agree with that author’s central hypothesis: the Habermas’ theory is the starting point, and not the homestretch, for a critical dialogue with alternative ethical, juridical and political models which can contribute to overcome the limits of contemporary liberalism (Ibidem, p. 25).
CONCLUSION

According to Kant, differently from ‘things’, which are used as simple ‘means’ to achieve ends, and, therefore, have ‘prices’, the human being is an end in itself, not having a price, but ‘dignity’ (KANT, 1964, p.98). That dignity of each individual – made inviolable versus any entity that can use this individual as a mean and not as an end in itself – appears as an unbreakable obstacle as a requirement of nowadays’ theories of justice.

What I have tried to say is that this inviolable individual dignity does not need to be founded, necessarily, in a kantian metaphysics: if a theory of justice requires resonance at the society where it is applied, and that society has experienced a level of individuation by socialization that accommodates the kantian theorizations, a theory of justice applicable to that society needs to consider this inviolable individual dignity in its formulation.

As I was said before, that communitarian foundation of the human dignity just protect it in contexts of extreme individuation. In any community where that individuation can not be justified by the history, the human dignity will not be inviolable. I do not know if the kantian level of individuation has become universal. But I dare to say that even in Latin America – including Guatemala – the antithesis of the occidental liberal democracy, on Kymlicka’s view, the individuated human is an important reality that can not be neglected by a theory of justice that claims to be effective.

This is what, on my view, explain the liberal thought hegemony in the last years: liberalism met the kantism in the defense of the individuated human and its dignity, and, so on, it finds comfortable place on societies where the individual is a consolidated category that needs protection. But that do not explain why liberalism is also victim of so much resistance and critics, even when has a communitarian foundation. To answer this question, the hypothesis brought up here was that liberalism is weak when it is facing the central matter of a theory of justice: the equality.
In the name of equality, and, specially, against the inequality, the liberal thought have done so little, even considering the little it has promised. If the inviolability of the human being dignity has a lot to learn with how liberalism have promoted norms of justice about how protect the supremacy of individuated subject, the justice as a discourse structured on the matter of equality can not be a merely liberal justice, because it will endanger its own consolidation. The defense of individual as an autonomous and inviolable entity has nothing to do with the defense of indiscriminate wealth storage, or with a material inequality on scandalous level, even for a theory of fairness that prescribe equality only in a very different dimension.

And it is not only the matter of equality that diminishes the chances of a liberal doctrine to structure, only by itself, a vigorous theory of justice. Also for offering little resources against processes of individualization – or, like Castel has characterized it, negative individualization – when it separates the State from the management of social question and permits disaggregating levels of inequality, the liberalism dynamites the basis of a theory of justice that only makes sense inside a notion of collectiveness which, in that situation, can break up. It is only its insertion in a reality that surpass the atomized individuals that allows a theory of justice its generation, development and reflexivity to adapt itself to new contexts – so, as we know, the normative anachronism is a typical case of situation treated repeatedly as unjust. That means that is common to the liberal doctrines to forget about the fact that what I am is something determined by what I think and feel, and what I think and feel is determined by the prevalent thoughts of the society I belong, wherein a do not form an isolable atom but an ingredient in social configuration (BERLIN, 1997, p.408).

All that conduces us – at least, this is the paper’s thesis – to the conclusion that we are inside a context that claims for formulations of post-liberals theories of justice: theories of justice that takes for granted some liberal lessons, but that thinks about the just, especially about its main requisite of equality, in a manner that goes a lot beyond the liberal premises.
REFERENCES


