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RESEARCH ARTICLES

Philosophical Reflections

Citizen Skeptic: Cicero's Academic Republicanism

Scott Aikin

Abstract: The skeptical challenge to politics is that if knowledge is in short supply and it is a condition for the proper use of political power, then there is very little just politics. Cicero's Republicanism is posed as a program for political legitimacy wherein both citizens and their states are far from ideal. The result is a form of what is termed *negative conservatism*, which shows political gridlock in a more positive light.

Keywords: Cicero, skepticism, Plato, republicanism, conservatism

I.

Consider the ideal state Socrates sketches in Plato's *Republic*. It has its three classes, structured educational system, division of labor, and noble lies. The three famous challenges from Socrates' interlocutors to this polity were to the equality of women, to the proscriptions on private property, and to the possibility of a class of people with the requisite knowledge to run the complicated machinery of state. The answers to the first two challenges depended on a successful answer to the third. That is, only if we know that it's right do we overturn custom in such a radical way. Further, we can have that certainty only if there is a kind of knowledge sketched in the divided line – knowledge that transcends the mere appearances and guesswork in which we normally wallow. If that kind of knowledge is not achievable, communicable and practicable, then the ideal state is not possible. Knowledge, in short, is the source of legitimate authority; otherwise it's all just coercion by people with titles.

And Plato saw, too, that even with this knowledge and structuring, the state is still vulnerable from inside, as the famous precipitous progression from the kallipolis to timarchy, to oligarchy, and then to tyranny looms. Knowledge may make the ideal state possible, but it cannot guarantee its stability.

Now consider a clear fact about what passes for knowledge of politics. Many people take themselves to know many things about political culture,

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justice, and how governments should be run. Yet very few of them agree about much anything. This is not because one group is better informed, more honest, or open-eyed about the world than another. Few, if any, genuine political disagreements are between those who get it and those who don't. This is belied, of course, by how all too many involved in the debates themselves see the situation. They think and thereby portray the opposition to be mendacious, conniving, stupid and often downright evil.

Were it only the case that for every significant issue, there was one and only one side for reasonable and honest people and all the other sides were for the moral monsters and intellectual failures! What a world it would be!

Alas, we don't live in a world of easy answers, and so we don't live in a world wherein we can sort ourselves as clearly in the right, and everybody else is clearly in the wrong. This kind of intellectual humility, a kind of healthy skepticism, is bad news in one clear sense. The moral world is not as easy as dogmatism makes it out to be. But it's good news in another sense – we are liberated to learn a bit, have conversations with others who might otherwise be simple enemies, and it allows us not to be so worried about the doubts we might carry about what we'd for so long thought were our beliefs.

The simple fact is that we contract our beliefs more like catching colds than deliberating about and choosing them. Consider most people you know. Once you know a few things about their history, you can predict their political views. But notice that these determining factors for belief are not evidential factors for the belief's *truth*. Rather, they are just about whether these folks will *have* the belief. These beliefs are overwhelmingly products of their cognitive environment.

Now, even if it's strange to think it in the first person and think the thought, "My views are products of their environment and are contingencies of my upbringing," it is clearly easy to do with others. And it's a truism on college campuses. So liberal-leftist colleges are rife with speech codes and derogatory labels (usually involving a '-phobia') for any program critical of the progressive agenda. And religiously conservative campuses won't even allow students to have Young Democrats clubs or have anything but qualified Christian teaching staff, so as to allay the worries of parents that college might make their kids 'weird.'

Now, the point is not to fight the culture wars all over again. Instead, it is to point to a feature of them: they derive from a deep and abiding dogmatism, not only about the obvious correctness of their objectives, but to the obvious decadence and depravity of their opposition.

II.

That the contemporary world is a morally fractious place is, perhaps, not news. I presume that it is equally not news that the ancient world was morally fractious, too. In many ways, this is what led Plato to write his *Republic* and *Laws* as he did

– both the ideal and second best cities had to *start from scratch*. Neither political work was posited on providing a program of *reform* or *reconstruction* from the mess we find ourselves in, but of *construction de novo*. Plato's vision was a dogmatic one, a vision that runs that a properly run state is one that eliminates the fractiousness of the moral world: either *completely*, as we see in the totalitarian dream of the *Republic*, or by way of *redirection* as seen in the mixed state of *Magnesia* in the *Laws*. Those states are based on the thought that we can push RESET on history, that new starts happen. Maybe they do, maybe they don't, but the overwhelming likelihood is that we will never get the chance to push RESET. What then? More fractiousness? Back to the blind battle of dogmatisms?

I think this is why Cicero's skeptical political philosophy is important. First, Cicero is no dogmatist. He is a skeptic. He has his preferences, for sure, as to how to conceive of law and what desiderata are required for justice. But he thinks a good state makes room for a variety of voices. Second, Cicero is no revolutionary. He does not wish for the state to have RESTART; instead he takes things to be well-ordered as they can be without completely knocking it all down. So that makes him a kind of conservative, in his case particularly, a *Republican*. This republicanism is the core of his book, *De Re Publica*, on the commonwealth, the public thing. He stands for preserving a state that promises social stability, provides opportunities for all to represent their views or have them represented, and protects individual liberties.

And so a sketch of the intellectual core of Cicero's skeptical republicanism is worth our time to reflect upon. My plan is to briefly lay out Cicero's skeptical program in the *Academica*, specifically the method of reason-survey that yields intellectual freedom. I will then turn to showing how Cicero's political philosophy, both in the *Laws* and the *Republic* recapitulate the skeptical program. Finally, I will have some things to say about contemporary politics, particularly the phenomenon of legislative gridlock. It will be some good news about it.

III.

Cicero's philosophical education is best described as *eclectic*. He was tutored in Athens by the leading minds in the Academic philosophy (Philo of Larissa and Antiochus of Ascalon), Stoicism (Posidonius), and Epicureanism (Phaedrus and Zeno), but the output was decidedly skeptical.¹ He remarks, when providing a short digest of his works in an unguarded moment in *De Divinatione*, that his *Academica*, his defense of Academic Skepticism is the statement of his considered views.

¹ Cicero gives accounts of his educational history in *De Finibus* 1.16; *Tusculan Disputations* 2.61; *Academica* 1.14, and *Lucullus* 115.

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... in my *Academicis Libris*, in four volumes, I set forth the philosophic system which I thought least arrogant (*arrogans*) and at the same time most consistent and refined (*constans et elegans*). (*De Divinatione* 2.1)

What drew Cicero to the Academic viewpoint? Surely it was not the skeptical muddle the Academic program made of most every issue. The appeal of the dogmatic schools was that they provided a clear path, a bright line between right and wrong, a moral and cognitive compass. The Academics see it all as a conflicted and complicated mess.

There are many arguments on either side of these questions. One of these views seems certain to your *sapiens*; but the weight of the arguments on either side strikes our *sapiens* as so equally balanced (*rationem paria momenta*) ... that it is not even clear to him what is persuasive. (*Academica* 2.124)

The skeptics practiced what the Greeks called *dialectical* method, or Latinized, the mode of *pro et contra* with all issues.

It is a considerable matter to understand any one of the systems of philosophy singly, how much harder it is to master them all! Yet this is the task that confronts those whose principle is to discover the truth by the method of arguing both for and against all the schools (*et contra omnis philosophos et pro omnibus dicere*). (*De Natura Deorum*. 1.11)

[O]ur school argues against everything (*contra omnia ... disputatur*) ... because we could not get a clear view of what is probable (*probabile*) unless a comparative estimate were made of all the arguments on both sides (*ex utraque parte causarum*). (*De Officiis* 2.8)

In short, the order of thinking things through should be: hear all the arguments for and against, *then* make the decision. It won't be perfect, since the issues are difficult and it is likely not all the information is in, but we make the decision with our eyes open to the risks, what the stakes are, what things our critics will say if (and often enough when) we fail. Moreover, when we make this sort of eyes-open decision, *we* are the deciders, our conscience, our best most reflective judgment. It is not our antecedent presumptions, not our prejudices on the opposition, not our preferred outcome from before we heard all the evidence. Rather, it is us deciding.

[Y]et we are freer (*liberiores*) and less constrained (*solutiores*) in that we possess our power of judgment uncompelled, and are bound by no compulsion to support all the dogmas laid down for us almost as edicts by certain masters. (*Academica* 2. 8)

The contrast, of course, is with the alternative, that of showing up to debates with a simple agenda of arguing to defend the turf, give no ground, and demolish opposition. If that's been the default for argumentative exchange for most of one's intellectual life, think of how closed off one is, how a person's early commitments locked her in to a lifetime of intellectual commitments.

For all other people in the first place are held in close bondage placed upon them before they were able to judge what doctrine was the best, and secondly they form judgments about matters as to which they know nothing at the most incompetent period of life, either under the guidance of some friend or under the influence of a single harangue from the first lecture they attended, and cling to it as a rock to whatever theory they are carried to by stress of weather. (*Academica* 2.8)

The great irony is that we make so many of our intellectual allegiances long before we can tell the right from not, true from false, the profound from the stupid. Yet once we cast our lots, we find ourselves locked in: an intellectual program to defend, to represent, to carry on. A favored figure to promote, plumb and expand upon. All this before we had the data in, before we knew better.

Again, the Academic program is posed at least as something that mollifies the effect of the dogmatism of unreflective assent and its consequent intellectual servility.

[O]ur New Academy allows us wide liberty (*magnam licentiam*), so that it is within my right to defend any theory that presents itself to me as most probable (*maxime probabile*). (*De Officiis*. 3.21)

[I]t is characteristic of the Academy to put forward no conclusions of its own, but to approve those which seem to approach nearest to the truth (*simillima veri videantur*); to compare arguments; to draw forth all that may be said in behalf of any opinion; and without asserting any authority of its own, to leave the judgment of the inquirer wholly free. (*De Divinatione* 2. 150)

Now notice that skeptical philosophy in Cicero's hand is no negative image of dogmatism, one with no commitments, a view that all programs are bankrupt. Such austere skepticism is not the Ciceronian program. Cicero is a *mitigated skeptic*, a skeptic that allows us, once purged of our reactionary inclinations in the gristmill of the *pro et contra* method, to follow our best judgment on the basis of what looks most plausible. The consequence is that the Academic program can yield results, but they are tentatively held.

I shall humor you and explain what you wish as best I can, not however as if I were the Pythian Apollo making statements to be regarded as certain and unalterable, but following out a train of probabilities (*probabilia*) as one poor mortal out of many. For further than likelihood as I may see it (*veri similia videam*), I cannot get. (*Tusculan Disputations* 1.17)

And thus the Academics and Cicero were fallibilists, they held their views in ways that allowed revision in light of new evidence and required only that one follow the evidence, not a party line. And so we see how the intellectual humility of the skeptical tradition can yield fruit.

IV.

The political consequences of the Academic skeptical outlook are significant, as the output is what I call the *Citizen Skeptic*. But first, consider the biggest concern about the skeptical attitude when taken into the political realm, as Cicero pauses in *De Legibus*:

And let us implore the Academy – the new one, formed by Arcelisaus and Carneades – to be silent, since it contributes nothing but confusion to all these problems; for if it should attack what we have constructed and arranged so beautifully, it would play too great havoc ... (*De Legibus* 1.40).

Skepticism arises from the tumult of views, it is primarily a manifestation of the spirit of criticism, and its results are the weakening of commitment. The worry is that the skeptics' critical program is only negative, and purely destructive. The wake of the skeptic's critical view is not only a dissolution of our beliefs, but a failure of political will. This concern about skepticism is an instance of a longstanding anti-skeptical trope, that of *apraxia*. *A/praxia* being Greek for *no action* – skepticism's paralysis in the mind becomes paralysis in life. Now, the *apraxia* argument runs simply:

If one is a skeptic, one has no commitments.

One can act intentionally only if one has commitments.

We must act intentionally.

So, we must not be skeptics.

What makes the political case an instance of the *apraxia* argument is that political life requires a special brand of intentional action and intellectual commitment, one that approaches certainty, for there are sacrifices one must make in political decisions. One of Cicero's interlocutors in the *Academica*, Lucullus, invokes this thought:

It is impossible for anyone to value impartiality and fidelity so highly that there is no punishment he would refuse in order to maintain them, unless he has given his assent to impressions that can't be false. (*Academica* 2.23)

One must, it seems, be certain that justice is better than injustice when one is tempted to steal, when one must make a sacrifice or when one's very life is on the line. And so Cicero concedes in *De Re Publica*:

[T]he establishment of a state which is stable enough to endure for the ages requires by far the highest intellectual powers (*maximi consilii*). (*De Republica* 3.4.7)

When the stakes are high, the criteria for acceptance are demanding. And such conditions are ripe for skeptical challenge, as when standards go up, the occasions for doubt increase. And now let us return to the dismissal of the skeptics in *De Legibus*. Cicero hadn't finished his thought.

And let us implore the Academy – the new one, formed by Arcelisaus and Carneades – to be silent, since it contributes nothing but confusion to all these problems; for if it should attack what we have constructed and arranged so beautifully, it would play too great havoc; *at the same time I should like to win over this school, and so do not dare banish it from the discussion.* (*De Legibus* 1.40)

The Ciceronian program, then, isn't that the skeptic must be silent because critique will destroy what's been established, but that without the skeptic's challenge, without the withering gaze of Academic criticism, what stands will not continue and will not have the right to.

The reason why the highest intellectual powers are necessary for the confirmation of a just republic is that the ways the state may coerce, alienate, or staunch the autonomy of the citizens must be anticipated, and if not anticipated, then it must be recognized before rebellion and revolution foment. Cicero pauses in *De Legibus* to identify a core republican view, that all citizens need to feel the state is something they not only are protected by, but have a stake in. A good state is a *re publica* – a public thing, something that belongs to all. This is why the tribunate of the plebeians, despite the way it stands in the way of the Senate's role with its veto power, despite the way tribunes are mostly rabble rousers and blowhards, despite the fact that the institution of tribune is all too often abused in profligacy with budgets, it is necessary for the state of a true republic (*De Legibus* 3.18). It is in the tribune's appeal to the rabble that the tribunate makes the rabble care for the state. They care, and they care enough to hope that the state will be just; and so that it will survive.

The skeptical view that we do not have knowledge with these matters returns – we are all in this together, and so even the rabble's view matters. If the skeptic is right, none of us know. And so the views of the masses may be right for all we know.² Their being part of the conversation, part of the method of *pro et contra* is a condition for not only feeling part of the state, but for having any political authority.

But this is only a method of management. We do not have perfect knowledge. There is a limit of what we can do to anticipate and ameliorate. The tribunate functions as a good feedback mechanism for those purposes. But even with this institution, we cannot anticipate and ameliorate well enough for all circumstances. Disaster awaits all states.

[T]he essential nature of the commonwealth (*rerum publicarum*) often defeats reason. (*De Republica* 2.33.57)

Recall that even Plato's Kallipolis, one that starts from scratch, has the citizens raised under perfect conditions, and has perfectly wise leaders, has its own internal failure – it is vulnerable from the inside, it has its own trajectory of

² See Fott 2014, 250 for an account of the skeptical interface with the tradition of Natural Law in Cicero's politics.

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irrationality. Cicero's republic is not an ideal state, but the best the world's provided. And that means that we must run a government with the citizenry we've got. Some are virtuous and intelligent, but let's face it: most of our fellow citizens, most of *us*, are selfish, reactionary, badly educated and deeply irrational. For sure, some states are destroyed by large-scale invasions, pandemics, or famines. But that limit of political rationality is a limit provided by the world – we are not omniscient, we cannot anticipate and avert every earthquake or flood. But this limit is one of our failure to anticipate what we will do, how we will feel, and how we will get along. We are the agents of chaos; we are the limits of political reason.

Cicero proposes what he calls “the ideal statesman” as a model for what kind of character is required for consistently taking up with the requirements of state and setting an example for all involved. It is a republican parallel to the familiar philosopher-king. This ideal statesman must be:

... improving and examining himself continually, urging others to imitate him, and furnishing in himself, as it were, a mirror to his fellow citizens by reason of the supreme excellence of his life and character. (*De Republica* 2.42.69)

We might put it that the Ciceronian statesman is not only to be well-informed but to be exemplary about it. Knowledge, again, is the source of legitimate authority, so we need people who pursue it and encourage others to do so, too.

But this returns us to the skeptical challenge. If the skeptic is right, there isn't any knowledge. If the skeptic is right, there are not only no ideal states, there are no ideal statesmen. If the skeptic is right, our highest intellectual powers aren't too high and are hardly powers at all. The citizen skeptic, then, knows this is all a mug's game, a fool's errand. In the end, this politics stuff is inherently tragic.

Cicero himself was exactly such a tragic figure.³ He detects and stops the Catilinarian conspiracy, but he is hasty in the aftermath and orders the executions of the conspirators. This breaks a rule of procedure, and after his consulship, it yields banishment by the tribune Clodius Pulcher. Later, in the aftermath of Julius Caesar's assassination, Cicero becomes one of the few people who could run the Senate. He sees the chance to eliminate the remaining Caesarians under Mark Antony and he takes it. But Antony survives, makes amends with Octavian, and Cicero, himself, is executed.

Ideal statesman or no, the nature of politics, the play of force and justice, ambition and service, power and authority, defeated a voice of reason.

³ See Anthony Everett's portrait of Cicero's life in (2003) and Jonathan Zarecki's (2014) case that Cicero's picture of the ideal statesman arose from his own aspirations and failings in the aftermath of the Civil War.

V.

Let us return once more to the pause in *De Legibus* as Cicero considers barring the skeptics.

... let us implore the Academy ... to be silent .. for if it should attack what we have constructed so beautifully, it would play too great havoc ... (*De Legibus* 1.40)

Two background assumptions are operative here. The first is that what we have already is well-constructed, the second is that sticking with the stable is better than moving to the unstable. Despite the fact that Cicero was a skeptic, he nevertheless was a kind of conservative. My view is that Cicero's conservatism is a result of his skepticism. To see this point, let's make a distinction between *positive* and *negative* conservatism.

Positive conservatism is the view that our reason for preferring standing institutions and norms come from indicators that these institutions are truly just, are the best way to do things, are most reflective of truths of human nature. And there is a wide variety of sources for these sorts of reasons: perhaps those reasons derive from revealed truths in a holy book, these reasons could be derived from timeless truths, or a more modest kind of reason may simply be that longstanding practices wouldn't be so longstanding if they didn't have track records of success. So the positive conservative holds that we have positive reason to hold to standing institutions and norms.

Negative conservatism is the view that we have no positive reasons to hold to our current institutions and practices, but we have no positive reason in favor of any of the competitors either. All the views are on a kind of valuational flatland – they all have pros, they all have cons, every option is a mixed bag. The reason why we should prefer current institutions, however, is that, given what we know about humans, instability creates more problems. And so if every option has pros and cons, then considerations of changing from option A to option B adds to the cons of B (that we will create uncertainty, need to refigure things, and so on) and adds to the pros of A (that we don't get those headaches). And so negative conservatism is run off a principle of *minimal mutilation* – that reasons for change must outweigh not only reasons in favor of alternatives, but must outweigh the reasons against disturbing the peace.

Clearly no skeptic would ever be a positive conservative, but the possibility of negative conservatism is open. The question is, however, how a skeptic would assent to the minimal mutilation principle.

Notice that the minimal mutilation principle is not a principle of belief, but of action. It is not about what is true, but it is about what to do when you don't know what's true. Many of those who have sipped or drunk deeply from Skepticism's font light on something akin to the minimal mutilation principle. In the parallel ancient skeptical tradition, that of Pyrrhonism, Sextus Empiricus holds that one should live according to the skeptical fourfold:

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For we follow a line of reasoning which, in accordance with appearances, points us to a life comfortable to the customs of our country and its laws and institutions and to our own instinctive feelings. (PH I.17)

And Rene Descartes, the famous methodological skeptic, proposes a provisional morality, the first maxim of which is:

... to obey the laws and customs of my country, constantly retaining the religion ... I had been brought up in since childhood, and in all matters follow the most moderate and least excessive opinions. (*Discourse on Method III* CSM 1.122; AT VI.23)

The reason in the background is that if the circumstances are such that you can actually do philosophy, so that you can do the kind of skeptical critique wherein we can even frame this kind of question, then we have something that counts in favor of the circumstances. We want to keep that circumstance, those cultural and political conditions, in place. To do otherwise risks error, risks overturning what makes it possible for us to correct our errors.

This is why tyranny is so bad. Tyrants have a bad track record for how they treat people, but they have an even worse track record of hearing about and correcting those errors. The same goes for oligarchs and plutocrats – they not only make errors, but because of how they are situated, they don't recognize the errors as errors. And this is why philosophy is very hard to do under tyrannical conditions, under oligarchic conditions – honest criticism, the play of *pro et contra* is not valued.

This is why Cicero is a republican conservative. It is under the conditions of recognizing and protecting individual rights, including a wide variety of voices, and weighing policy on the basis of shared reasons that philosophy can flourish. For this arrangement is fragile and ultimately doomed – the nature of the republic defeats reason. A tyrant will rise, the rich will take control from all, the poor will abolish high culture, or a military junta will take over.

VI.

So what lesson is there to take from this trajectory from the citizen skeptic to the tragic republican? I think one lesson is that we can see a current phenomenon of political culture we regularly find objectionable in a new light.

Consider all the complaint we have of gridlock in legislatures. Bills can't be passed, major legislation is held up, budgets take forever to be endorsed. Governance happens very slowly.

This regrettable phenomenon is explained by two things: the rules of legislatures and the polarization of the legislators (and, presumably, the voting populace). Gridlock is regrettable, but given the fact of the wide and sometimes unbridgeable differences of opinion on major matters, slow-moving government is preferable, is it not? Muting the polarized sides with rules of procedure, vetoes, opposing forces within the various offices. The design is for the

government not to be a fast-moving thing. Why? Because without the institutional rules, the counter-balances of offices, one of the factions may pass their agenda unopposed and undo what had come before. And with another swing of voter sentiment, another press of governmental RESTART.

Legislative gridlock is good news in a polarized society. It means that the rules of government have made it so that the cultural extremes do not take control for short bursts of production for their own program and destruction for the opposition's. And so minimal mutilation. We retain what makes it so that we can at least see each other's views as worth debating, but don't do anything rash.

The bad news, of course, is that little gets done – often, not even the moderate compromises. But we must remind ourselves not only what goods gridlock stands in the way of, but what bads it prevents. And so the citizen skeptic, the Ciceronian tragic republican, not only endorses the state of current gridlock, but holds that it may be the best we should hope for.

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Dialectical Strategic Planning in Aristotle*

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Abstract: The purpose of this paper is to give an account and a rational reconstruction of the heuristic advice provided by Aristotle in the *Topics* and *Prior Analytics* in regard to the difficulty or ease of strategic planning in the context of a dialectical dialogue. The general idea is that a Questioner can foresee what his refutational syllogism would have to look like given the character of the thesis defended by the Answerer, and therefore plan accordingly. A rational reconstruction of this advice will be attempted from three perspectives: strategic planning based on the acceptability of Answerer's thesis, strategic planning based on the predicational form of the thesis, strategic planning based on the logical form of the thesis. In addition, we will provide an illustration of the potential of this heuristic advice as we apply it to the interpretation of a fragment from Plato, presuming that, in a similar way, a reading of this kind might be more generally applicable in the interpretation of the Platonic dialogues.

Keywords: acceptability, Aristotle, dialectic, heuristic advice, Plato, predicational form, logical form, refutation, strategic planning

I. Introduction

In a well-known passage found in Plato's dialogue *Meno*, Meno the Thessalian shows himself baffled after Socrates ruined his fourth attempt to define virtue and complains to his Athenian fellow in the following manner:

Socrates, before I even met you I used to hear that you are always in a state of perplexity and that you bring others to the same state, and now I think you are bewitching and beguiling me, simply putting me under a spell, so that I am quite perplexed. Indeed, if a joke is in order, you seem, in appearance and in every other way, to be like the broad torpedo fish, for it too makes anyone who comes close and touches it feel numb, and you now seem to have had that kind of effect on me, for both my mind and my tongue are numb, and I have no other answer to give you. (...) I think you are wise not to sail away from Athens to go and stay elsewhere, for if you were to behave like this as a stranger in another city, you would be driven away for practicing sorcery. (*Meno* 80a-b)¹

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¹ All translations from Plato are to be found in Cooper 1997 and from Aristotle in Barnes 1984.

Socrates the Sorcerer, by whose magic others were brought in a profound state of puzzlement, was regarded since the times of classical Greece as the paragon of the dialecticians who played the role of Questioners in dialectical encounters. But what is this 'magic' or 'sorcery' and how does it work? To answer this questions one of 'Clarke's three laws' (Clarke 1973, 21) comes to mind, namely the third: any sufficiently advanced technology is indistinguishable from magic. Well, in the present case we should downgrade *technology* to *techne* and say that in the *techne dialektike* Socrates was certainly one of the most experienced practitioners and his effects on the untrained might have been similar to that of a dialectical magician.

It is already common-knowledge that this *techne dialektike* was needed in dialogical encounters of a specific kind, which involved two participants, a Questioner and an Answerer, and took place in private or in front of an audience. The subject of discussion was called a dialectical problem and was stated at the beginning of it by the Questioner in the following form: "Is X the definition/property/genus/accident of Y or not?" The Answerer then had to choose one side of this question by saying for example "X is the definition of Y." This was his thesis. At this point the discussion began with each of the participants having a specific purpose: the Questioner had to attack the thesis, the Answerer had to defend it. In order to achieve their individual goals each participant had specific moves at his disposal. The Questioner, as the name indicates, asked questions of the form "Is X a property of Y?" (n.b. a dialectical question is different in formulation from a dialectical problem, the latter needing to have 'or not' added). The Answerer was allowed to reply by 'Yes' or 'No,' or to ask for clarifications or present an objection. Each answer of the 'Yes' or 'No' type was considered a concession. The discussion ended when the Questioner had obtained enough concessions from the Answerer to form a syllogism with a conclusion which contradicted the Answerer's thesis. This syllogism was called refutation, and if it was considered valid, then the attack of the Questioner was considered successful. If, on the other hand, the Questioner did not manage to secure enough concessions to build up a syllogism of this kind, then the Answerer's defense was considered successful. As any practitioner of an art, Socrates knew the rules and techniques better than most of his interlocutors and this allowed him to know what the result should look like right from the start of a dialectical encounter, when his partner of discussion just opted for a thesis. And, as any skilled Questioner, he also had to some extent knowledge of how to order and direct his arguments and, if he encountered difficulties in the form of his interlocutors resisting to concede premises, hindering the argument as a consequence, how to warrant the movement forward, towards his planned conclusion. His 'magic' was a result of all these. Here we will focus on only one of his 'magical powers,' namely the 'divinatory one,' or, as we will see in what follows, his skill in dialectical strategic planning. This dialectical skill greatly improves the quality of a dialectical discussion.

We might think that dialectical discussions between unskilled participants were neither useful, nor entertaining. But there was another factor involved here. The quality of the discussion was judged by the audience and/or by the discussants. Moraux (1968, 285-286) states that the quality of a discussion did not rest on the ability of the participants alone, but also on the character of the problem discussed (therefore also on the thesis chosen to be defended/refuted). Some problems implied harder theses to defend or to refute. Some commentaries, philological or philosophical, on these matters were written (e.g. Smith 1989, 148-149; 1997, 123-128; Brunschwig 1967, LXXI-LXXII; 2007, 260-263 etc.), but they still do not offer a complete and unitary picture. A detailed discussion on how exactly the outcome and the quality of a dialectical encounter can be assessed on the basis of the discussed problem or defended thesis is still needed and the relevance of Aristotle's heuristic advice in this respect still needs to be proven by linking it to examples of usage. Based on the mentioned heuristic advice, a rational reconstruction of what is called here 'dialectical strategic planning' becomes possible, the complexity of this strategic planning being determined by the character of the thesis defended by the Answerer. To provide a reconstruction of this kind is the main purpose of the present paper. The importance and relevance of it shall be pointed out by showing that it is applicable in the interpretation of the dialectical discussions to be found in the dialogues of Plato.

With this purpose in mind, the structure of this paper shall be the following: I will begin by presenting the concept of refutation, the knowledge of what a refutation is being essential for the process of strategic planning. Then strategic planning from three perspectives will be presented: 1. Strategic planning based on the acceptability or plausibility of the thesis; 2. Strategic planning based on the predicational form of the thesis; 3. Strategic planning based on the logical form of the thesis. Following these, it will be shown that this reconstruction is useful for the interpretation of Plato's dialogues from a dialectical perspective. For this, an illustration will be provided, focusing on a short dialectical sequence found in Plato's *Charmides*.

II. Refutation

The concept on the basis of which dialectical strategic planning becomes possible is refutation. Its definition can be found in the *Sophistical Refutations*:

to refute is to contradict one and the same attribute – not the name, but the object and one that is not synonymous but the same – and to confute it from the propositions granted, necessarily, without including in the reckoning the original point to be proved, in the same respect and relation and manner and time in which it was asserted. (*Sophistical Refutations* 5, 167a23-27)

For the present purposes, the conditions for a non-sophistical refutation² in a dialectical context can be presented in the following manner:

1. It should meet the general requirements for a syllogism/deduction, i.e. that the conclusion should come about by necessity from the premises,³ since it is itself a type syllogism;⁴

2. Specific 'dialectical' conditions:

A. Regarding terms: both the Questioner and the Answerer should employ the same terms (no synonymy) and refer to the same things (no homonymy).

B. Regarding premises: accepted by the Answerer (or deduced from premises accepted by the Answerer); accepted without *petitio contrarii*;

C. Conclusion: either intermediate (the Answerer can accept it based on what he already conceded) or final which needs to be the contradictory of the Answerer's thesis; also, it should avoid *petitio principia*.⁵

The way we understand refutation⁶ is essential to what follows next, because the entire strategy of the Questioner is built upon the idea of the refutation's conclusion being the contradictory/contrary of the thesis chosen by the Answerer. Therefore, if we need to know what kind of conclusion we need for the refutation we need to know what kind of thesis we have: is it reputable or implausible? Is its predicate the definition of its subject? Is the predicate the genus, property or accident of the subject? Is the proposition affirmative or negative, universal or particular in form? Is the proposition indefinite or

² When it comes to the choice of terms, what is translated 'to refute' by modern translators appears in Aristotle as ἀνασκευάζειν or ἀναιρεῖν (in the *Topics*) and ἐλέγχειν (*Sophistical Refutations*) (for a discussion on this issue: Dorion 2012, 264-265).

³ See e.g. *Prior Analytics* I, 1, 24b18-22, *Posterior Analytics* II, 5, 91b14, *Topics* I, 1, 100a25-27, *Sophistical Refutations* 1, 164b27-165a2 and 6, 168a21-23 etc.

⁴ *Sophistical Refutations* 6, 168a36-37. *Sophistical Refutations* 1, 165a3-4. *Prior Analytics* II, 20, 66b14-16. For a dialogical interpretation of Aristotle's definition of the syllogism (Dutilh Novaes 2015).

⁵ Although the requirements related to *petitio principii* and *contrarii* are not present in the *Sophistical Refutations*, they appear in *Topics* VIII, 13. This regulation states that for example the Questioner cannot ask the Answerer directly to concede the conclusion of a refutation as a premise of the refutation (*petitio principii*) or cannot ask the Answerer to concede the negation of an already conceded premise (*petitio contrarii*). It should also be mentioned that Aristotle has in mind several varieties of *petitio principii* and *petitio contrarii*.

⁶ For treatments on the concept of refutation, see Leshner 2002 on etymology, Vlastos 1983 for Socrates, and Dorion 2012 and Bolton 2012 for Aristotle. Dorion (2012, 255-257) shows that Aristotle does not consider refutation to be peculiar to dialogical contexts and there are also non-dialectical contexts in which it can be used.

definite? If definite, then what degree of definiteness does it have?⁷ Also, knowing what kind of conclusion is needed enables one to know what premises are needed to bring it about, and so on. So, to sum up, dialectical strategic planning involves 1. the assessment of the specific features of the thesis; 2. based on these features, the knowledge of what kind of conclusion and what kind of premises are needed in the refutational syllogism. This can be done from at least three, overlapping⁸ perspectives: the acceptability of the thesis vs. the acceptability of the refutation's conclusion, the predicational form of the thesis vs. the predicational form of the refutation's conclusion, the logical form of the thesis vs. the logical form of the refutation's conclusion.

Before closing this section it should be stressed that knowledge of what is designated here by "dialectical strategic planning" was essential not just for the skilled Questioner, but also for those who wanted to be a competent Answerer.⁹

III. Strategy Based on the Acceptability of the Thesis

Propositions (theses, premises or conclusions) can be or fail to be acceptable or plausible in character. If the propositions are accepted as true by a group of people then we can call them *endoxa*.¹⁰ There are also propositions called *adoxo*, i.e. implausible propositions.¹¹ Endoxa and adoxa are considered to be contraries. When it comes to the acceptability of the thesis, its plausible or implausible character, Aristotle writes the following:

If (...) the thesis is implausible (ἀδόξου), the conclusion is bound to be reputable (ἐνδοξου), whereas if the former is reputable the latter will be implausible; for the conclusion which the questioner tries to draw is always the opposite of the

⁷ Of course, if the proposition expresses a definition, genus or property if follows directly that it is universal and affirmative (or negative if it says that X is not the genus of Y); only in the case of the particular accident we have particulars (see *infra* section 4, table 3).

⁸ I say overlapping because it will be observed that a thesis like "Animal is not the genus of man" may be read in several ways: implausible from the perspective of its acceptability, expressing that 'Animal' belongs to 'Man' as an accident (predicational form), or that "Some men are not animals" (particular negative; logical form). The refutation therefore can be accomplished with a proposition like "Animal is the genus of man," which is plausible and acceptable (acceptability), is a proposition expressing the genus (predicational form) and it is a universal affirmative (All men are animals; logical form).

⁹ *Topics* VIII, 5: esp. 159a39; The Answerer should know these too: *Topics* VIII, 9; *Topics* VIII, 14; 163a29-b16. On 'strategic rules' for the Answerer see Kakkuri-Knuuttila 2012, 80-87.

¹⁰ "those opinions are reputable which are accepted by everyone or by the majority or by the wise – i.e. by all, or by the majority, or by the most notable and reputable of them." (*Topics* I, 1, 100b20-22) Also, a thesis, or a dialectical proposition "is bound of necessity to be either reputable or implausible or neither; and reputable or implausible either without qualification or else with a restriction, e.g. to some given person, to the speaker, or to some one else." (*Topics* VIII, 5, 159a38-b2). See also: *Topics* I, 4, 101b28-35, *Topics* I, 10, 104a9-11, *On interpretation* 11, 20b21-30 etc.

¹¹ For discussions about *endoxa*, *adoxo* and *paradoxa*, see Grote 1872, 388 and Smith 1997, xxiii-xxiv, 78.

thesis. If, on the other hand, what is laid down is neither implausible nor reputable, the conclusion will be of the same type as well. (*Topics VIII, 5, 159b4-8*)

We can observe that Aristotle indicates a general rule regarding the choice of premises for syllogisms:

Those who try to deduce from premises more implausible than the conclusion clearly do not deduce correctly (*Topics VIII, 6, 160a14-16¹²*)

In addition, the relations between endoxical and adoxical propositions are conceived as relations of contrariety:

Now dialectical propositions consist in asking something that is reputable to all men or to most men or to the wise, i.e. either to all, or to most, or to the most notable of these, provided it is not paradoxical; for a man would assent to the view of the wise, if it be not contrary to the opinion of most men. Dialectical propositions also include views which are like those which are reputable; also propositions which contradict the contraries of opinions taken to be reputable, and also all opinions that are in accordance with the arts. (...) Likewise, also, propositions contradicting the contraries of reputable opinions will pass as reputable; (...) Also, on comparison, it will look like a reputable opinion that the contrary predicate belongs to the contrary subject. (*Topics I, 10, 104a9-33*)

Robin Smith states his concern regarding the fact that it is unclear if these relations of contrariety are between terms or propositions,¹³ but in this case it seems that the relation of contrariety between propositions is built upon the relations of contrariety between terms. To explain this, the usual reference is *Topics II, 7*, where Aristotle talks about ‘modes of conjunction’ and different combinations of contraries result in relations of contrariety:

Table 1.

1	to do good to friends	to do evil to enemies
2	to do evil to friends	to do good to enemies
3	to do good to friends	to do evil to friends
4	to do good to enemies	to do evil to enemies
5	to do good to friends	to do good to enemies
6	to do evil to friends	to do evil to enemies

Aristotle insists that in the case of the first two there is no discussion, because there is no contrariety, both of 1 being preferable, while both of 2 are objectionable (*Topics II, 7, 113a1-8*). However, in the following 4 one of the ways we can read the contraries is as follows: If “Always do good to friends” is

¹² Cf. with what is required of the premises of a demonstration: “it is necessary for demonstrative understanding in particular to depend on things which are true and primitive and immediate and more familiar and prior to and explanatory of the conclusions.” (*Posterior Analytics I, 2, 71b20-22*)

¹³ Smith 1997, 79.

reputable, then “Never do good (= do evil) to friends” is not reputable (= implausible) and therefore “Sometimes do good to friends” should also be reputable. But these might rather be thought of as contraries not necessarily from a logical perspective, but rather contraries in terms of what is preferable: if it is reputable to prefer ‘doing good to one’s friends,’ it would not be reputable to prefer ‘to do harm to one’s friends.’

The discussion on what kind of premises and conclusion are needed for a refutation of the Answerer’s thesis to come about from the perspective acceptability or plausibility of the propositions can be summarized in the following manner:

Table 2.

Thesis	Conclusion of the refutation	Premises of the refutation	Reference
Implausible without qualification	Reputable without qualification	Reputable and more reputable than the conclusion	<i>Topics VIII, 5, 159b13-15</i>
Reputable without qualification	Implausible without qualification	Reputable or less implausible than the conclusion	<i>Topics VIII, 5, 159b18-19</i>
Reputable with qualification/restriction (to a person, a group etc.)	Implausible with qualification (to a person, a group etc.)	Reputable/Implausible insofar as they are less implausible than the conclusion	<i>Topics VIII, 5, 159b20-23.</i>
Implausible with qualification/restriction (to a person, a group etc.)	Reputable with qualification	Reputable (more reputable than the conclusion)	

Aristotle says in *Topics I* that the dialectical problem should be about something on which there is disagreement between people (*Topics I, 11, 104b3-5*). These disagreements make dialectical discussions possible, for no one would make a problem (and implicitly choose a thesis to defend) of what is accepted by all or obvious to everyone (*Topics I, 10, 104a7-8*). The problems (and theses) should neither be too difficult or of things that admit no doubt and, therefore, disagreement among people (*Topics I, 11, 105a7-10*).

This can be considered the most basic level of conceiving an opposition between a thesis and the conclusion of its refutation, disagreement between people being at its origin. It can be observed that a concept of contrariety is already present in it. At the next level, or perspective, considered, the contrariety

or contradiction becomes more evident, as in the case of one universal proposition being refutable by a single counter-example, which example may take the form of a particular proposition.

IV. Strategy Based on the Predicational Form of the Thesis

The predicables are specific to Aristotle's account of dialectic. In short, the subject and the predicate of a proposition are to be in a certain relation with one-another: the predicate can be the definition of the subject ("Man is a rational animal;" "Rational animal is the definition of man"), it can be the property of the subject ("Man is capable of laughter;" "Capable of laughter is proper to man"), it can be the genus of the subject ("Man is an animal;" "Animal is the genus of man") or it can be the accident of the subject ("Man is tall;" "Tall(ness) is an accident of man"). For Aristotle every proposition, every problem, indicates a definition, property, genus (differentia is considered generic), or accident¹⁴. Formulated dialectically: a problem would be "Is rational animal the definition of man or not?"; a dialectical premise: "Is animal the genus of man?"¹⁵

Predicables can be represented starting from the most difficult to prove and continuing to the easiest or from the easiest to refute to the hardest following Aristotle's account from *Topics* VII, 5. For his purpose, Aristotle discusses definition, property, genus, accident, considered both as universal accident and particular accident.¹⁶ What is interesting enough is that when Aristotle wrote the central books of the *Topics*, i.e. II-VII, he already considered propositions related to each predicable (e.g. propositions expressing a definition, genus, property, accident) refutable based on the relations of contradiction and contrariety. This was possible given the fact that dialectical problems (and dialectical propositions in general) can be expressed in universal or particular, affirmative or negative form, "Every pleasure is good," "No pleasure is good," "Some pleasure is good," "Some pleasure is not good" (these being the examples of Aristotle at the beginning of *Topics* II, 1). Now, these may not seem to be propositions having a predicational form as "Is the good the definition of pleasure?" "Is the good the genus of pleasure?," "Is the good a property of pleasure?," "Is the good an accident of pleasure?" However, the choice of examples made by Aristotle can be explained.

¹⁴ *Topics* I, 4, 101b16-18; on the number of predicables, see *Topics* I, 12. On the predicables, see for instance: *Topics* I, 5, 8 and Stump 1988, 244-255. Also: *Topics* II, 1, 109a9-26 where a distinction is made between 'belonging in part' (accident – conversion non-necessary) and 'belonging absolutely' (Definition, Genus, property – conversion necessary).

¹⁵ When we said at the beginning that a proposition has a 'predicational-form' we had in mind these predicables. E.g. a proposition has the 'propositional form of a genus' if in it is asserted that its predicate is or is not the genus of its subject: "Animal is the genus of man," "Animal is not the genus of man."

¹⁶ On universal and particular accident see also *Categories* 1, 1a24-1b2.

In the first book of the *Topics* (I, 5) Aristotle mentions that, apart from propositions that express predicables, there are also 'definitory' and 'generic' propositions (of the same nature, yet different from propositions in which the predicates are the definitions or genera of their subjects). A distinction between propositions 'predicational in a strong sense' and propositions that are 'predicational in a weak sense' seems to exist here. A distinction between predicational propositions and propositions of a 'predicational-kind' is stressed in Kakkuri-Knuuttila and Tuominen (2012, 67 sqq., 77 sqq.) in terms of 'strict interpretation' vs. 'flexible interpretation.' As said, Aristotle mentions two types of 'predicable-like' propositions:

1. Definitory:

One may, however, call definitory such a remark as that the beautiful is the becoming, and likewise also of the question, 'Are perception and knowledge of the contraries the same or different?' – for argument about definitions is mostly concerned with questions of sameness and difference. In a word we may call definitory everything that falls under the same branch of inquiry as definitions (*Topics* I, 5, 102a5-10).

2. Generic:

The question, 'Is one thing in the same genus as another or in a different one?' is also a generic question; for a question of that kind as well falls under the same branch of inquiry as the genus. (*Topics* I, 5, 102a36-102b1)¹⁷

Aristotle also indicates that predicable-like propositions are useful for refuting, but not establishing:

For if we are able to argue that two things are the same or are different, we shall be well supplied by the same turn of argument with lines of attack upon their definitions as well; for when we have shown that they are not the same we shall have demolished the definition. But the converse of this last statement does not hold; for to show that they are the same is not enough to establish a definition. To show, however, that they are not the same is enough of itself to overthrow it. (*Topics* I, 5, 102a11-17; cf. *Topics* VII, 1, 2 about what is required for a definition)

Information regarding the difficulty of defending or attacking a proposition based on its predicational form is to be found in the central books of the *Topics*. For instance about definition we find out that:

it will be easier to attack people when committed to a definition. [For an attack is always more easily made on definitions]. (*Topics* II, 4, 111b13-15; cf. *Topics* V, 4, 132a28-132b7).

When one wants to refute a definition one can use in the tactical phase of the dispute *topoi* useful in the case of the other predicables, but not the other

¹⁷ One may wonder whether there are also 'property-like' or 'accident-like' propositions.

way around (*Topics* VI, 1, 139a24-139b5). In addition, definition seems to be considered more sensible for attack because of its composite character:

when one cannot attack the definition as a whole because the whole is not familiar, one should attack some part of it, if it is familiar and is evidently incorrectly rendered; for if the part is demolished, so too is the whole definition. (*Topics* VI, 14, 151b3-7).

So we have the following five cases:

1. If the thesis is a definition then:

1.1. It can be refuted using either an SoP (easier and preferable) or an SeP (*Topics* VII, 5, 154b3-5) and this needs not to be done against the entire definitional phrase, but is sufficient to be directed either against the proposition that expresses that the predicate is the genus of the subject, i.e. against the genus as part of the definition (e.g. "Man is an animal," 'animal' being the genus of 'man'), or against the proposition that expresses that the predicate is the differentia of the subject, i.e. the differentia as part of the definition (e.g. "Man is rational," 'rational' being the differentia here; *Topics* VII, 5, 154a33-35).

1.2. It also can be refuted if it is shown that the definition does not apply to some of the things defined (*Topics* VII, 5, 154b5-11) or applies to more things than those defined (*Topics* VII, 5, 154b11-12) or if convertible, it is not convertible as essence (*Topics* VII, 5, 154a29-31).

2. Property:

2.1. Since property is, as the definition, a phrase (e.g. 'capable of laughter' is a property particular to man), only one part of it is enough to be refuted in order to refute it entirely. It can also be refuted by means of SoP (easier and thus preferable) or SeP. (*Topics* VII, 5, 154b13-14).

2.2. The property also needs to be convertible as a property, not as a definition (*Topics* VII, 5, 154b14-21. *Topics* I, 8, 103b6-17). As in the case of definition, if it is proven that the property applies to more things than the ones designated or does not apply to some of the things designated by it then it is refuted (*Topics* VII, 5, 154b22-24).

3. Genus:

3.1. For refutation: it is shown that the predicate as genus does not hold of any of the things designated by the subject, i.e. by an SeP.

3.2. Or that it belongs as a genus only to some (SoP) (*Topics* VII, 5, 154b25-26, 29-30).

4. Universal accident:

4.1. For refutation: it is shown that the predicate does not belong as an accident at all (SeP).

4.2. It is shown that the accident does not belong in at least one case (SoP) (*Topics* VII, 5, 154b35-36).

5. Particular accident: can be refuted only if it is shown that the predicate does not belong as accident in any case (SeP) (Topics VII, 5, 154b37-155a2).

This is represented systematically in Table 3.

Table 3.

Pred.	Purpose	Methods	Reference
DEF.	Establish	each of the two constituent elements, i.e. the genus and differentia, of the definition need to be established	<i>Topics</i> , VII, 5, 154a24-29, 35-37
		Definition can only be established through a deduction with universal conclusion	<i>Topics</i> , VII, 5, 154a37-154b1
		The definition needs to be convertible with the defined object	<i>Topics</i> VII, 5, 154b2-3. <i>Topics</i> I, 8, 103b4-10.
	Refute	Definition can be overthrown by overthrowing one of its components, i.e. the genus or the differentia	<i>Topics</i> VII, 5, 154a33-35.
		Definition can be overthrown by proving that a particular does not belong (SoP). Also by SeP.	<i>Topics</i> VII, 5, 154b3-5
		1. If the essence of the thing would be also designated by something else than the definition, then the definition is refuted because only by definition can the essence be designated. 2. Definition applies to more things than those designated and therefore is not convertible.	<i>Topics</i> VII, 5, 154a29-31 <i>Topics</i> VII, 5, 154b11-12
PROP.	Establish	the property being a complex phrase, each component has to be proven to belong	<i>Topics</i> VII, 5, 154b13-14
		As in the case of definition, the deduction needs to be universal (SaP)	
		The property also needs to be convertible.	<i>Topics</i> VII, 5, 154b14-21. <i>Topics</i> I, 8, 103b6-17
	Refute	Only one part of the parts of the complex phrase has to be refuted (by SoP or SeP)	<i>Topics</i> VII, 5, 154b16-17, 21-22
		SoP or SeP	
The property belongs also to other things than those designated by the complex phrase, therefore is not convertible.	<i>Topics</i> VII, 5, 154b22-24.		
GEN.	Establish	The Genus belongs in each case; The Genus belongs as a Genus	<i>Topics</i> VII, 5, 154b24-25, 27-28
	Refute	SoP, SeP	<i>Topics</i> VII, 5, 154b25-26, 29-30
UN.	Establish	SaP – need to prove that it belongs in every case	<i>Topics</i> VII, 5, 154b34-35

ACC.	Refute	SoP or SeP	<i>Topics</i> VII, 5, 154b35-36
P. ACC.	Establish	SiP	<i>Topics</i> VII, 5, 154b36-37 <i>Topics</i> VII, 5, 154b37-155a2
	Refute	SeP	Also <i>Topics</i> II, 1, 109a9-26. Accidents do not need to be convertible.

The next perspective, the one based on the logical forms of the thesis and of the conclusion of the refutation, is the most regimented of the three main perspectives that we consider here and it is presented in the context of Aristotelian syllogistic. The main discussion about it is to be found in the first book of the *Prior Analytics* and this suggests that there is a direct relation between the *Topics* and the theory of syllogism developed in the *Prior Analytics*.

V. Strategy Based on the Logical Form of the Thesis

This next way the Questioner can plan his strategy is based on what we called the logical form of the thesis. Aristotle already conceived the refutation of dialectical propositions or theses in terms of contrariety between universals or contradiction between universals and particulars in the context of predicables¹⁸ or as opposition in the case of the acceptable/not acceptable or plausible/implausible character of a proposition, as seen in the previous two sections.

The general idea resulting from this is that universals are easier to refute than particulars, which is commonsensical. Speaking of the difficulty of refuting or grounding a proposition, in *Topics* VIII, 3, Aristotle talks about theses that are δυσεπιχείρητα 'more difficult to approach' and εύεπιχείρητος 'more easy to approach'.¹⁹ A similar discussion appears in the *Prior Analytics* I, 26, as Robin Smith points out (Smith 1997, 125). There, the discussion about the ease or

¹⁸ Or in *Topics* II, 3, 110a23-110b7: "if we want to establish a statement, we shall prove that in one use the attribute belongs, if we cannot show it of both; whereas if we are overthrowing a statement, we shall prove that in one use the attribute does not belong, if we cannot prove it of both. Of course, in overthrowing a statement there is no need to start the discussion by securing any admission, whether the attribute is said to belong to all or to none of something; for if we prove that in any case whatever the attribute does not belong, we shall have demolished the universal assertion of it, and likewise if we prove that it belongs in a single case, we shall demolish the universal denial of it. Whereas in establishing a statement we ought to secure a preliminary admission that if it belongs in any case whatever, it belongs universally, supposing this claim to be a plausible one."; again in *Topics* III, 6, 119a32-36: "If the problem is put in a particular and not in a universal form, in the first place the universal constructive or destructive commonplace rules that have been given may all be brought into use. For in demolishing or establishing a thing universally we also prove it in particular; for if it belongs to all, it belongs also to some, and if to none, not to some."

¹⁹ This is Robin Smith's translation. 'δυσεπιχείρητος' can be encountered in the *Topics* VIII, 3, 158b5; *Topics* VIII, 3, 158b16; *Topics* VIII, 3, 159a3.

difficulty to refute propositions is provided from the perspective of the logical form of the categorical propositions. As a difficulty-criterion, we are presented with the following:

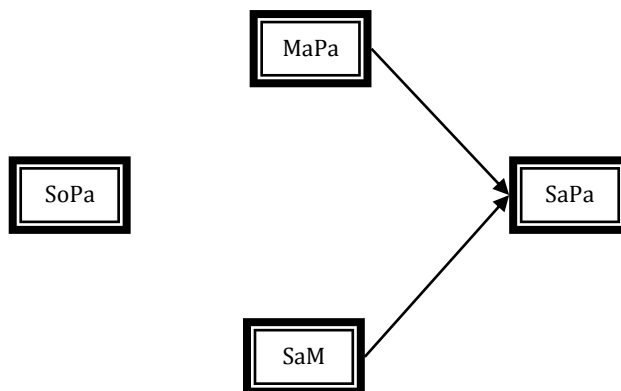
that which is concluded in many figures and through many moods is easier (ῥᾴον); that which is concluded in few figures and through few moods is more difficult (δυσεπιχειρητότερον) to attempt. (*Prior Analytics* I, 26, 42b30-32).

Considering this, we can summarize the contents of the chapter 26 from the first book of *Prior Analytics* in the following manner:

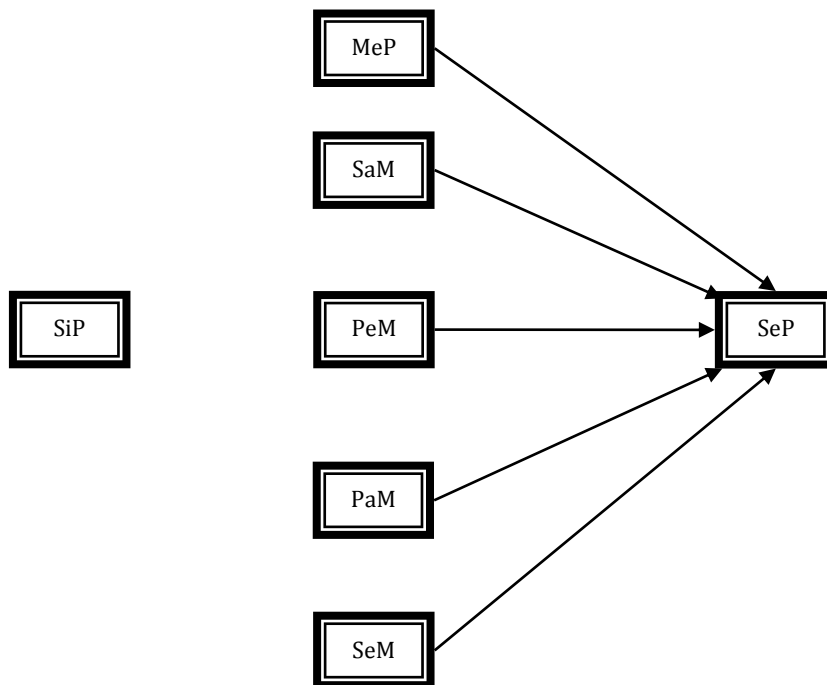
Table 4.

P	Establish by (from hardest to easiest)	N.	Refute by (from easiest to hardest):	N.
SaP	1st figure - Barbara	1	1st figure - Celarent, Ferio; 2nd figure Cesare, Camestres, Festino, Baroco; 3rd figure Felapton, Bocardo, Ferison	9
SeP	1st figure - Celarent; 2nd figure - Cesare Camestres	3	1st figure - Barbara, Darii; 3rd figure - Darapti, Disamis, Datisi	5
SiP	1st figure - Darii; 3rd figure - Darapti, Disamis, Datisi	4	1st figure - Celarent; 2nd figure - Cesare, Camestres	3
SoP	1st figure - Ferio; 2nd figure - Festino, Baroco; 3rd figure - Felapton, Bocardo, Ferison	6	1st figure - Barbara	1

For example, in the case of a refutation of SoP we would have something similar to this (MaP and SaM can be grounded by deduction from other universals, or by induction):



In the case of a refutation of a SiP we would have the following (SaM can be used in two cases,²⁰ for a Celarent and for a Cesare; in this case also, the universals can be established either by deduction either by induction).



²⁰ We can say that this kind of proposition is more dangerous to the Answerer than the rest because, if accepted, it can be used in two combinations. If he cannot be on the lookout of all the universals, he should at least focus his attention on rejecting the more dangerous ones. And vice versa, if he manages to reject those propositions with a relevant counter-example, then his position improves. Aristotle does not provide any distinction of this kind, but it might be useful to follow it through. For example, if the plan is to refute a SaP, with a possible refutation which would have as a conclusion either SeP or SoP, and if we would order the premises that the Answerer should avoid conceding (taking the perspective of the logical form) from the most dangerous, because usable in more possible syllogisms, to the less dangerous, then we would have to consider the following ten types of premises: MeP (usable in Celarent, Ferio, Felapton, Ferison), SiM (usable in Ferio, Festino), SaM (usable in Celarent, Cesare), PeM (usable in Cesare, Festino), PaM (usable in Camestres, Baroco), MaS (usable in Felapton and Bocardo), SeM (usable in Camestres), MoP (usable in Bocardo), SoM (usable in Baroco), MiS (usable in Ferison), which each, if accepted by the Answerer, may bring about a refutation by SeP or SoP. So, the Answerer should be on the look-out especially for premises of the MeP type. In the case of the SeP type as a thesis, a refutation with an SaP or SiP type of proposition as conclusion is needed. To reach this conclusion, six kinds of premises can be used: MaP (usable in Barbara, Darii, Darapti, Datisi), MaS (usable in Darapti, Disamis), SaM (usable in Barbara), SiM (usable in Darii), MiP (usable in Disamis), MiS (usable in Datisi) and so on. Of course the argument map becomes more complex if we add the auxiliary premises needed to ground these main premises.

In light of this it seems clear that the discussion regarding the ease or difficulty to establish or to refute a proposition in the *Prior Analytics* can be properly understood only if we relate it to the dialectical context. For instance, if the Answerer has to defend a thesis of the SoP type, then both the participants should know that the Answerer can be refuted after a refutation with a conclusion of the SaP form has been brought about based on his concessions. Therefore, within the rules of the dialectical encounter, the Answerer should do his best not to concede two affirmative universals as main premises or premises that will ground universal main premises. The strategy of the Questioner is clear, since he does not really have enough space for maneuvering. In this specific case the job of the Answerer is easiest because all he needs to do is to prepare counter-examples for those propositions.

But imagine the plight of the Answerer who has chosen a thesis of the SaP type: things become thus much more difficult for him. He should realize that the Questioner will have at his disposal many more venues of attack, as many as the moods to establish SeP and SoP, i.e. 9 ways (combinations of premises). The Questioner therefore can use any of these moods in order to build up a refutation. And to do this he only needs to shuffle his question ordering²¹ so as to be able to obtain relevant concessions.²² Both the Questioner and the Answerer should know these because they need to be able to argue or counter-argue on any thesis and to follow parallel lines of argument.²³ If one cannot follow, then he will most likely commit a mistake and risk refutation:

It is clear also that the easiest thing of all is to overthrow a definition. For on account of the number of statements involved we are presented in the definition with the greatest number of points of attack, and the more plentiful the material, the quicker a deduction comes; for there is more likelihood of a mistake occurring in a large than in a small number of things. (*Topics* VII, 5, 155a3-6).

²¹ Aristotle recommends this: *Topics* VIII, 1, 156a23-26.

²² For example *Topics* VIII, 1, 156a 23-26. The Answerer cannot refuse to answer questions without justification (*Topics* VIII, 2, 158a28-30).

²³ E.g. "In dealing with any thesis, be on the look-out for a line of argument both pro and con; and on discovering it at once set about looking for the solution of it; for in this way you will soon find that you have trained yourself at the same time both asking questions and answering them. If we cannot find any one else to argue with, we should argue with ourselves. Select, moreover, arguments relating to the same thesis and range them side by side; for this produces a plentiful supply of arguments for carrying a point by force, and in refutation also it is of great service, whenever one is well stocked with arguments pro and con – for then you find yourself on your guard against contrary statement. Moreover, as contributing to knowledge and to philosophic wisdom the power of discerning and holding in one view the results of either of two hypotheses is no mean instrument: for it then only remains to make a right choice of one of them. For a task of this kind a certain natural ability is required: in fact real natural ability just is the power rightly to choose the true and shun the false. Men of natural ability can do this; for by a right liking or disliking for whatever is proposed to them they rightly select what is best." (*Topics* VIII, 14, 163a36-b16)

We can understand better this fragment now if we link it to what we have just observed about universals. Since a definition can be refuted by showing that either the predicate does not belong to the subject either as a genus or as a property, both these being universals, we can imagine that the difficulty for the Answerer is doubled because the Questioner has at his disposal 9 ways to refute the Genus SaP, respectively 9 ways to refute the Differentia SaP.²⁴

VI. An Example from Plato

In what follows a short illustration of the possibility of strategic planning on behalf of the Questioner will be provided. The example consists of a short dialectical sequence found in Plato's *Charmides*, in which Socrates refutes Charmides' second attempt to define 'temperance':

He paused and, looking himself very manfully, said, 'Well, temperance (σωφροσύνη) seems to me to make people ashamed and bashful, and so I think modesty (αἰδώς) must be what temperance really is.'

'But,' I said, 'didn't we agree just now that temperance was an admirable thing?'

'Yes, we did,' he said.

'And it would follow that temperate men are good?'

'Yes.'

'And could a thing be good that does not produce good men?'

'Of course not.'

'Then not only is temperance an admirable thing, but it is also a good thing.'

'I agree.'

'Well then,' I said, 'you don't agree with Homer when he said that *modesty is not a good mate for a needy man?*'

'Oh, but I do,' he said.

'So it seems to be the case that modesty both is and is not a good.'

'Yes, it does.'

'But temperance must be a good if it makes those good in whom it is present and makes bad those in whom it is not.'

'Why yes, it seems to me to be exactly as you say.'

'Then temperance would not be modesty if it really is a good and if modesty is no more good than bad.'

'What you say has quite convinced me, Socrates,' he said. (*Charmides* 160e-161b)

1. Firstly, if we take into account the acceptability or plausibility of the thesis, premises and the conclusion of the refutation we should take things in a reverse manner, because we are far removed historically to know right from the start what could have been counted as a plausible/reputable opinion or *endoxon* and what is not. So, we should start with the conclusion: "Temperance is not

²⁴ Cf. everything treated in this section with what Aristotle writes in *Prior Analytics* II, 8-10. Robin Smith indicates that is hard to understand why Aristotle gives any weight to conversions, but speculates that an explanation can be given by referring to a dialectical context (Smith 1997, 197).

modesty.” It seems that the Greeks considered αἰδώς and σωφροσύνη distinct, the first being more like an emotion, the second being more like a rational ability to take things into consideration.²⁵ So, a proposition maintaining that they are different can be considered acceptable, plausible, i.e. *endoxon*. Next, if we pass to one of the premises important in Socrates’ argument, “Temperance is always good,” we can follow Guthrie (1975, 165, n. 2) and consider it an *endoxon* because no ordinary man would deny this (as in the case of excellence for instance). Also, if we consider the other premise, the particular one which overthrows Charmides’ definition, “there is a kind of modesty which is not good,” this is also reputable or plausible, i.e. *endoxon* (since it is based on the authority of Homer and there is no serious reason to doubt that this Homeric dictum would have been taken otherwise than an *endoxon* – thus the eager acceptance of it by Charmides).²⁶ At this point we can see that we have an acceptable conclusion, based on acceptable premises. If we go back to what Aristotle has to say about refutation based on the acceptability of the thesis (table 2 *supra*), we can see that the thesis, since it equates two things that were considered distinct by an eventual majority, based on authoritative texts by Homer for example, can be considered to be *adoxon*, i.e. implausible. Thus, in this case, we might consider that a thesis that is *adoxon* is refuted by an argument with premises and conclusion that can be considered *endoxa*.²⁷

2. Let us pass on to the next perspective, concerning itself with the predicational form of the thesis. The purpose of Charmides is to define. But his thesis has the following form: “Temperance is modesty.” If we refer to the distinction stressed in Kakkuri-Knuuttila and Tuominen (2012, 67 sqq., 77 sqq) then we can observe that here we do not have a formulation of the type: “Modesty is the definition of temperance.” (or at least a part of the definition of temperance) or the “The definition of temperance is the definition of modesty.” Thus we can consider that this thesis has a predicational form in a weak sense, being formulated as “Temperance is modesty.” If we consider what Aristotle has to say, in order to infirm the equation between temperance and modesty, one can show that there is a particular case where temperance is not modesty or modesty is not temperance (see table 3 *supra*), which Socrates eventually does by letting Charmides accept the particular case from Homer where modesty is a bad thing. So, temperance being always good and modesty sometimes good and sometimes bad, a refutation comes about.

3. In the case of the reading based on the logical form, things are a bit more complicated. To fit Plato’s dialogues into a procrustean syllogistic reading is something that might involve a certain amount of methodological errors as the

²⁵ See the excellent discussion in Rademaker 2005, 50-54.

²⁶ Homer, *Odyssey* XVII, 347. Also: Hesiod, *Works and Days* 316-318.

²⁷ Of course, Aristotle said that the premises need to be more plausible/acceptable than the conclusion. But at this point I do not think that we have a way to discern between *endoxa* in this respect.

one of anachronistic reading. The syllogism by which Charmides is refuted has been read in the following manner:

Major Premise: Modesty is not good.

Minor Premise: Temperance is good.

Conclusion: Temperance is not modesty.

Lutoslawski considers this to be a Cesare (Lutoslawski 1897, 203), i.e. the reading becomes: No modesty is good; All temperance is good; No temperance is modesty. This seems to be consistent with the advice given by Aristotle: if the thesis is SaP, then it can be refuted either by a refutation with a conclusion of the SeP or SoP type, Cesare having an SeP conclusion (see table 4 *supra*). But this reading seems odd, because it is obvious that Socrates convinces Charmides that in some cases modesty is good, in others (as in the reference to Homer's *Odyssey*) it is not. Therefore, the major premise should run like: "Some modesty is not good"²⁸ instead of "No modesty is good." But this would imply that the conclusion will also be a particular: "Some temperance is not modesty." And we would have a syllogism of the type: Some modesty is not good, all temperance is good, some temperance is not modesty, an OAO type of syllogism. But the only OAO valid syllogism is in the third figure, i.e. Bocardo, and not in the second. This would be fallacious then.²⁹ But that should not really be the case. There are no rigid rules regarding which of the conceded propositions should be considered as major or minor premises in the refutational syllogism. If we apply the principle of charity here, then the syllogism can run as follows: All temperance is good, some modesty is not good, therefore some modesty is not temperance. Then, this yields a valid Baroco of the second figure.³⁰ If we check table 4 from above, then we can observe that Baroco is a type of syllogism that can be used to refute a universal.

So, to wrap things up, in this particular case, if it can rightly be considered that the thesis of Charmides was of the *adoxon* type, definitory in its predicational form and universal affirmative from the perspective of its logical form, we can consider that the mission of Socrates was fairly simple.

²⁸ Novak (2003, 4, n. 6) suggests that a reduction has been operated from "Modesty is good and is not good" to "Modesty is not a good" by the law "if (p & not-p), then not-p," p being "Modesty is good." This might seem plausible, but without textual evidence we cannot take this to actually be the case in the text, although it will surely be helpful to find a rule like this among the ones presented in the *Topics*.

²⁹ There seem to have been scholars who considered the syllogism underlying Plato's text fallacious. See Guthrie 1975, 165, n. 2.

³⁰ Clarification on this point was possible with the valuable help of Leon Geerdink, my initial inclination being to consider the syllogism a fallacy.

VII. Concluding Remarks

To sum up, we can illustrate the two extremes when it comes to theses in terms of difficulty to defend or to attack:

I. If the Answerer has chosen a thesis that is a definition and it is adoxical/implausible then the Questioner is at advantage: 1. He will need a refutation with a conclusion that is endoxical and thus will be able to secure more easily usable premises from his opponents. 2. He will be able to refute the definition if he attacks the genus or the differentia; 3. the genus and differentia being universal propositions (All humans are rational, all humans are animals) he will have 9x2 moods to attack the definition; it is evident that in this case it will be extremely hard for the Answerer to follow the line of argument without making a mistake.

II. If the Answerer has chosen to defend a thesis that "X is not the accident of Y" and which is also endoxical of the type accepted by most people, then the job of the Questioner will be extremely hard because he will need: 1. a refutation with an implausible/adoxical conclusion, meaning it will be hard for him to obtain usable premises (at least one implausible concession being needed); 2. He will have only one way to attack, by means of a universal affirmative, and therefore the Answerer's job will be as easy as possible because he will be able to follow the argument with the lowest risk of error.

It can be observed that the divinatory powers of a good Questioner amount to a trained skill to foresee what is needed in a dispute in order to reach a refutation. And this explains the dialectical practice only in part, because there is still enough wonder left about the way the skilled Questioner (e.g. Socrates) chooses to present his questions, in what order, or the manner in which he leads his interlocutor through the entanglement of the dialectical discussion. The present considerations are referring only to the initial phase of strategic planning. In what follows next in the dispute, the Questioner, after his initial strategic plan should do the following: 1. Based on what auxiliary premises he needs to establish the main premises and on strategic rules found in the Eight Book of the *Topics*, he should order his questions in such a manner that it will be hard for the Answerer to follow the line of argument and thus make the Answerer more inclined to concede needed premises; 2. He should choose his premises from an endoxical point of view based on any lists and tables he has.³¹ 3. Next, based on the predicational form of the thesis/anti-thesis he should know what *topoi* he can employ in the dispute in order to secure concessions from the Answerer. He will know, for instance, that if he has to attack a definition, he can also use the *topoi* of genus, property or accident, but if he wants to attack a proposition expressing an accident, the *topoi* of definition are useless (see *Topics* VII, 5). 4. In concert with these, based on the logical form and predicational form of the thesis/anti-thesis he should know what logical form and what

³¹ For this see *Topics* I, 14, 105b12-15; also Smith 1997, xxiii-xxiv.

predicational form should the main premises and the auxiliary premises have and what kind of *topoi* he should employ to reach each.

This heuristic advice given by Aristotle seems to be applicable to some extent to dialectical sequences present in Plato's dialogues. In future papers the applicability of a reading of this sort will be tested further.

Appendix: On the Status of the Most Definite Theses

A peculiar case which does not seem to conform to the hierarchical view described in the article, where universals and definitions are the easiest to refute and the hardest to defend, seems to appear in the 3rd book of the *Topics*. It relates to definiteness (or definite character) of the thesis. At the beginning of the *Prior Analytics*, propositions are said to be of three kinds: universals, particulars and indefinite. Indefinite is the statement in which something is said "that it does or does not belong, without any mark of being universal or particular, e.g. "Contraries are subjects of the same science," or "Pleasure is not good" (*Prior Analytics* I, 1, 24a19-22). In the *Topics* we are provided with a more detailed view on the way in which statements are refuted based on their definiteness:

If the problem is indefinite, it is possible to overthrow it in only one way; e.g. if a man has asserted that some pleasure is good or is not good, without further definition. For if he has asserted that some pleasure is good, you must prove universally that no pleasure is good, if the proposition in question is to be demolished. And likewise, also, if he has asserted that some pleasure is not good you must prove universally that all pleasure is good: it is impossible to demolish it in any other way. For if we prove that some pleasure is not good or is good the proposition in question is not yet demolished. It is clear, then, that it is possible to demolish an indefinite statement in one way, whereas it can be established in two ways; for whether we prove universally that all pleasure is good, or that some pleasure is good, the proposition in question will have been proved. Likewise, also, supposing we are required to argue that some pleasure is not good, if we prove that no pleasure is good or that some pleasure is not good, we shall have produced an argument in both ways, both universally and in particular, to show that some pleasure is not good. If, on the other hand, the thesis is definite, it will be possible to demolish it in two ways; e.g. if it is maintained that it is an attribute of some pleasure to be good, while of some it is not; for whether it is proved that all pleasure, or that no pleasure, is good, the proposition in question will have been demolished. If, however, he has stated that only one single pleasure is good, it is possible to demolish it in three ways; for by proving that all pleasure, or that no pleasure, or that more than one pleasure, is good, we shall have demolished the statement in question. If the thesis is still more definite (διορισθείσης),³² e.g. that prudence alone of the virtues is knowledge, there are four ways of demolishing it, for if it is proved that all virtue is knowledge, or that no virtue is, or that some other virtue (e.g.

³² J. Brunschwig notes that the meaning this term has here is different from the one found in the *Prior Analytics* I, 1 24a17-22 (Brunschwig 1967, 77, 163-164).

justice) is, or that prudence itself is not knowledge, the proposition in question will have been demolished. (*Topics* III, 6, 120a6-31)

Thus we have two kinds of propositions: indefinite and definite, the latter having degrees of 'definiteness.' The general rule by which we can consider the ease or difficulty to refute or establish a thesis is linked to these degrees: the more definite the thesis, the easier to refute. We have the following:

Table 5.

Thesis (all different kinds of particular propositions)	Form ³³	Refutation by
Indefinite: affirmative form	'at least some S are P'	SeP.
Indefinite: negative form	'at least some S are not P'	SaP.
Definite: exclusive generic	'only some S are P'	SaP, SeP.
Definite: exclusive specific	'only one S is P; and at least one S is not P'	SaP, SeP, at least two S's are P.
Definite: exclusive singular	'only a is an S that is P; and at least one S is not P'	SaP, SeP, b is not a and b is an S that is P, a is not P, [a is not an S].

It is certain that indefinite propositions are refuted by universals because it does not matter what form they take if a quantifier is added, they remain refutable in this way (e.g. if an indefinite proposition becomes SaP by adding the universal quantifier then we can refute it by SeP or SoP; if, on the other hand, it becomes SiP, then it will be refuted only by SeP; therefore it is always refuted by SeP).

In the case of definite propositions their exclusive character can be seen as similar to the exclusivity of the property or definition. If we consider this conjointly with what was seen in the sections dealing with the predicational form and logical form of the thesis, then we can conclude that the easiest to overthrow and hardest to defend type of proposition is the definite exclusive singular one. However, it seems highly unlikely that anyone should opt to defend a thesis of this type, save maybe for Meletus, when he insists that "Socrates alone corrupts the youth" (*Apology* 25a).^{34,35}

³³ Brunschwig 1967, 163-164.

³⁴ Brunschwig (1967, 164) states that Aristotle, in his definitive logic, abandoned these distinctions between different kinds of definite particulars.

³⁵ This paper was written during a research visit at the Faculty of Philosophy, University of Groningen, where I benefited from the hospitality, discussion and observations of the members of the NWO funded "Roots of Deduction" project (dir. Catarina Dutilh Novaes). For the extremely helpful and insightful comments, which improved the paper a lot, I wish to express my gratitude to: Bianca Bosman, Catarina Dutilh Novaes, Rohan French, Leon Geerdink, Job de Grefte, Erik C. W. Krabbe and J. A. van Laar. Special thanks to Erik C. W. Krabbe who was kind enough to review and offer very helpful comments and corrections to the 'almost' final version of the paper.

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A Sketch of a Humane Education: A Capability Approach Perspective

Kevin Ross Nera

Abstract: Poverty, understood as basic capability deprivation, can only be solved through a process of expanding the freedoms that people value and have reason to value. This process can only begin if the capability to imagine and aspire for an alternative lifestyle worthy of human dignity is cultivated by an education program that develops both the capability to reason and to value. These two facets play a major role in the creative exercise of human agency. This program of humane education can only come from an adequate description of the human agent as a persona that seeks to actualize itself based on his/her understanding of the good. Education must therefore seek to cultivate the capability to have an adequate conception of the good (normative) as well as the capability to constantly re-evaluate one's conception of the good (evaluative) in order to freely and reasonably choose a life that one values and has reason to value. Education must therefore entail not merely the development of skills nor specialization in a particular field but must concentrate on the integration of the human person as a whole which leads to self-creative praxis.

Keywords: capability, philosophy of development, education, actualization, reason, value, Amartya Sen

Introduction

If poverty is seen essentially as deprivation of basic capabilities or the capability to lead lives one values and has reason to value (Sen 1999, 87), then development ought to be seen as the process of liberation from such capability deprivation. However, material liberation requires another sort of liberation, that of the imagination. As such, one of the capabilities that deserves special attention is the capability to imagine and aspire for a lifestyle that is worthy of human dignity. Without this capability, the process of development cannot even begin to start because people would just be stuck in their current state of poverty and misery without any way of freedom. This capability therefore plays a fundamental role in the possibility of development for even happening. Thus, development efforts must pay sufficient attention on the cultivation of this capability to imagine and aspire for an alternative lifestyle worthy of human dignity. This cultivation can only take place through a process of humane education that enables people to fully exercise their individual freedom as a

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social commitment (Sen 1999, xii). In order for a program of humane education to be instituted, it is first necessary to provide for a description of the human agent and his/her relevant capabilities. It is only when such a process of transformative education which addresses these capabilities more fully and cultivates the individual's reasoned agency has taken place that Sen's perspective of *Development as Freedom* can be fully productive. Only when transformative education has taken place the individual would be more conducive towards the improvement not only of his/her own life but also of the society to which he/she belongs. The improvement of society through the expansion of the substantive freedoms that people enjoy can only take place through the cultivation of these central capabilities.

Foundations of a Humane Education

In order to understand our proposal for a humane education, we must first begin with an understanding of the human being as an agent. This understanding of the human being as an agent is in turn grounded on an understanding of the human being as a *persona*.

Human as *Persona*

Instead of seeing the human person as merely a rational animal, I would like to proceed with an understanding of the human person as a *persona*. The human agent as a *persona* is a being which seeks to actualize himself/herself in freedom according to his/her most creative potentials (Rodriguez 2008, 60). The *persona* is never in a state of stasis but is in a process of continual becoming. It does not have a fixed essence or a strict definition of what being human means that it merely actualizes, but rather has its actualization as a process of continual unfolding according to one's limited but nevertheless creative potentials. It is precisely the actualization of the utmost possibilities that inheres in every individual that is the essence of being human rather than a fixed essence that is defined *a priori*. This view of the human being as a *persona* respects the destined, given aspects of life such as his/her family, race, gender, sexuality, embodiment as well as the concrete aspects of the human person such as the actual circumstances and situations that he/she faces from birth until death. As such, this view sees the human agent as being in a perpetual state of dynamic self-actualization in which his/her very life and meaning is at stake.

Furthermore, the *persona* is not seen just for what he/she currently is but also for the utmost potentials that reside within his/her being. Thus, its focus is not merely with actuality but with the creative potentials that have yet to be unlocked and which is possible to actualize within the agent. This process of self-actualization is not mere behaviourism or blind response to external stimuli but is a matter of freedom. Rather, such exercise of freedom always takes place through concrete action which is the site of self-actualization. The exercise of

this freedom through concrete action that may be either constructive or destructive to the self is made possible only because the persona as such is the unifying center of these intentional actions. Here, intentional is to be understood as having a double meaning in the sense of having their actions always directed to certain concrete objects or situations. And second, such actions are always intentional in so far as they tend to the fulfilment of one's personal life projects. One's life is oriented towards the fulfilment of the personal projects that one has chosen which are none other than the concrete manifestations of the deeply held conception of the good that one has. These life projects ground the actions that one undertakes and is the fount of meaning for one's life and actions. Meaning is found on the basis of these life projects that define what one's life is and is going to become.

Actualization within Society

While the persona actualizes himself/herself through concrete action, the space of concrete action in which free choice unfolds is always within a social context. This social context is the society in which the persona belongs. Society therefore plays a big role in the actualization process of any individual persona. Hence, the agent's quest for self-actualization is always intertwined with the societal conditions that may be enabling or disabling for one's self-actualization. A person may find it difficult to concretize one's life projects because of the prevailing societal conditions and this is precisely what poverty as capability deprivation is all about. It is about denying the people the opportunity to be what they can be due to the lack of fair and equitable processes and opportunities that would otherwise have allowed them to concretize their life plans. Poverty is seen as a negative or disruptive phenomenon that prevents individuals from actualizing themselves. As such, it must be overcome through the process of liberation that would entail allowing people to exercise their reasoned agency in a more constructive manner. Without such development, the freedom of people to actualize themselves is stifled by the persistence of these unjust social conditions which are the by-product of the individual choices that we make. Thus, development must seek toward the transformation of the individual in order for him to act in such a way that will make society a more conducive place for self-actualization. This, as Amartya Sen proposes, can be done through expanding the freedoms of people to lead the lives they value and have reason to value.

Freedom, Reason and Value

From Sen's definition of development, three important facets of the human person come to light – freedom, reason, and value. These three are highly interrelated and can be mutually constructive of one another. For our purposes, we shall like to investigate the relationship between these three important facets

of the *persona*. In particular, we would approach it through the understanding of freedom as being essentially mediated by reason and value. There is no such thing as freedom that is not mediated by these two facets because these two facets are the source of the intentionality behind one's actions. Free choice is geared towards the fulfilment of a particular purpose and not merely the blind response to external stimuli. In other words, this simply means that the meaning behind our free choices is grounded on the reasons behind our actions. These reasons are in turn a response to the values that we hold dear in determining the choices that we make. The meaningful exercise of human freedom is thus grounded on reason and value.

In order to proceed, we must now examine what these two facets actually contain in order that our view of the human agent as a free and self-actualizing persona will be complete. Such a description of the persona would in turn determine the prescription – in particular, the type of education that must be instituted – that I would like to propose.

Reason and Rationality

First of all, it is important to define reason by saying what it is not. Contrary to the prevailing understanding of rationality especially that provided by mainstream economics wherein a rational person is one that is benefit maximizing and cost minimizing, our understanding of rationality proceeds through a much broader perspective. This broader perspective on rationality hopes to be more faithful to human life as it is actually experienced and not just the mere abstraction of theory – economic or otherwise.

The problem with this limited perspective of rationality, as I would argue, is that it operates on a pre-determined and limited conception of what the good is. It presupposes a certain valuation system (that of utility) and takes this valuation system as the ultimate and pre-dominant valuation system that people have. This value system sees the human person as essentially a self-satisfying creature for whom other matters such as the affairs of others are only secondary. This is problematic since people don't always operate under the presumption of selfishness and in fact they make decisions out of compassion and care for others. Furthermore, such a limited point of view makes paragons of virtue such as Mohandas Gandhi, Martin Luther King Jr., Mother Teresa, and Nelson Mandela as nothing more than great fools and ordinary people as being less foolish (Sen 2006, 21). This is clearly not the case as there are much more motivations at play within the human psyche aside from self-interested behaviour.

As an alternative to this view of rationality, I propose a different conceptualization of rationality that has two important facets – horizontal reasoning and vertical reasoning. The first, horizontal reasoning, has to do with decision-making wherein the choices available to one are different in type but are of the similar value. Decisions such as what to eat during dinner assuming that the choices do not starkly differ in prices or matters of preference such as

color and style fall under this category. The second, vertical reasoning, plays a more important role in ethical matters and the matters which have real value as this is the type of reasoning that is employed when faced with options that are of different degrees. The decision to eat at a luxury restaurant using the people's money when one could use the money for the right purposes is one instance of the use of this vertical or ethical decision making. It forces one to choose between social justice on the one hand, and luxury dining on the other. The capability to figure out whether one is faced with a situation that requires horizontal or vertical decision making is itself constitutive of this capability. Such a capability has mainly to do with being able to recognize the different values that are attached to the choices made available by one's particular circumstances and the capability to form a hierarchy among these values. Such reasoning is not therefore mere intellection but is a form of intuition of a hierarchy of values. This hierarchy is not one that is set in stone from the outset but rather serves as an ethical compass that affects our decision-making process. This capability affects our decision-making but does not determine it *a priori*. Rather, this capability works in dynamic interaction with the concrete circumstances one is embedded in as well as the personal life projects that one has. Thus, such reasoning is always in play in the acting out of intentional actions as was discussed earlier.

Vertical Reasoning and Value

In order to understand the important relationship between vertical reasoning which is the capability to form a schema of values which guide our ethical decision making processes and values, it is first important to begin with a preliminary understanding of what values are, or more precisely, what they are able to make the human agent do.

Values, following a Schelerian framework, refer to that which has the intrinsic capability to pull people to respond through an action of valuing (Rodriguez 2008, 2). Values are therefore a call which requires of the individual agent a response that seeks to actualize the value that is an inherent possibility in the thing that carries the value. Values are therefore a call to action on the part of the individual who is able to perceive these values through a form of intuition. This intuition is an intuition of the hierarchy of values for values are always arranged according to a particular schema where some values are held to be of higher importance than other values. Furthermore, multiple values may be carried by a concrete object or a particular situation and it is part of the individual's capability for vertical reasoning to figure out what the relevant values are in a particular situation and to see which of them ought to take precedence in one's free choice for actualization.

On the part of the individual, there exists certain predispositions for perceiving the good manifested in the particular predispositions towards certain order of values. These predispositions form a schema which guides our ability to perceive and respond to value (value-ception) which we actualize in the choices

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that we make given the particular situations and options made available to us. This schema serves as a rough and ready guide for our decision-making processes and forms the basis of the rationality behind our actions.

Values and Historicity

While we are able to intuit values in concrete objects and situations, this does not mean that values are not mediated by historical circumstance. In fact, the ways in which we value (i.e., our value systems) are a product of our own particular historicity. This does not mean, however, that our historicity fully determines our values for we are free to interact precisely with other horizons that contain different valuational schemas and to decide for ourselves which among the multiple value schemas available to us we will subscribe to. This capability for choice and integration enables us to have a more sensitive and practical valuational schema than what is immediately given to us by our historicity. Nonetheless, our historicity plays a crucial role in the formation of our value systems for the possibility of having an expanded value system still begins from the horizon of our own perspectival value system.

The main contribution of our historicity towards the formation of our value systems is through the *ethos* of our period which is the valuational system that guides the inner lives of a certain period and society and which effectively shapes our individual value systems (Rodriguez 2008, 63). This *ethos* is a partial capture of the order of the *cosmos* and is the utmost attempt of any society to encapsulate the hierarchy of the good within a particular set of beliefs or traditions or valuational schemas according to their limited capability (Rodriguez 2008, 61). As such, our *ethos* may be truthfully embedded in the hierarchy of values that governs the universe as such or it may be a destructive value system wherein the hierarchy of values that it proposes is an inversion of the natural order of the universe. Turning to our concrete experience of the excesses of capitalism, we can see that the prevailing *ethos* of our time which focuses on unconstrained wealth accumulation and cut-throat competition for the goods of this world is a clear inversion of a hierarchy of values that would enable people to truly flourish and exercise their freedom in a meaningful manner. Such a distorted *ethos* shapes the very way in which we as individuals live and shape our lives and thus, there is a danger of falling into the trap of ascribing to valuational schemas that are potentially destructive of our own well-being without even being aware of it. Reflection and interaction with other valuational systems is therefore important to make us aware of the limitations of our value systems and hopefully enable us to transform these valuational schemas such that they will become more conducive to our individual and our society's flourishing.

It is important to note, however, that the *ethos* of our time which shapes our own value systems is not itself unmediated. In fact, it is the result of the constant interactions of the different identities and affiliations that we first grow

up with and second, hopefully choose for ourselves. Our valuational systems are either a reflection of or a reaction against the prevalent *ethos*. They are the product of the interweaving of our plural identities and affiliations and the exercise of our reasoned capability to choose which among these relevant identities and affiliations hold more weight in our lives. Our rationality, which includes our value systems, is heavily influenced by our understanding of who we are and the baggage of the traditions and systems that are related with our identity. It is with this view of the *ethos* as a primary (trans-)formative influence on our own value systems that our historicity plays a major role in the formation of the way we perceive and understand the good.

As a final caveat, the particular value system embedded in one's rationality is not a fixed understanding of the good and an *a priori* hierarchy of such values but is an evolving schema through which one make decisions about life. The continuous transformation of this schema is dependent upon the different values one attaches to one's identities and the affiliations that one choose to have. Such affiliations demand a certain way of viewing the world as is the case with gender, religion, nationality, ethnicity, and political beliefs among others. Thus, our valuational schemas are not fixed schemas but are rather open to the dynamism of life and free choice.

As a brief summary, the persona's freedom, mediated by reason and value, constitutes his rationality. This rationality is in itself a process of constant becoming that is continuously shaped by the different choices one makes. It is the conceptual and valuational schema that helps one choose which among the plurality of choices and identities that one has one will attach greater significance to. This attachment of significance in turn compels one to action – whether affirmative or negative – to the perceived value of such choices.

A Sketch of a Humane Education

Now that we have undergone a description of what a persona as a free agent really is, we may turn our attention toward a prescription that would enable the persona as a free agent to transform his/her life as well as the society in which he/she lives such that he or she would have the substantive freedom to live the life that upon further reflection he/she has reason to value. The prescription I put forward is a form of education that allows individuals to lead humane lives. The question we must now address is this – what does a humane education consist of?

If the person is a free agent that acts in accordance with his/her rationality and this rationality is always a partial capture of the hierarchy of values that is inherent in the universe, then the expansion of the freedom of the person must necessarily entail the expansion of the capability to reason out for and respond to one's conception of the good. The expansion of the freedom to lead the life one values and has reason to value only makes sense if the capability to reason and value are enriched by education so that they do not remain blind to the life that

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holds an inherent dignity and calls for a minimum level of social justice which creates the space for creative flourishing. Without such cultivation, the possibility of development is nigh since people would settle for lives that are plagued with destitution or with destructive conceptions of the good life such as extreme materialism and blind adherence to dogmatic beliefs. Such a humane education must therefore consist in the cultivation of reason and value which allows people for creative and rational exercise of their agency in order to aspire to a sufficiently just state of life and to achieve the means for accomplishing these aspiration. Hence, a program of a humane education must not deal with the mere cultivation of technical and intellectual expertise but must rather entail the integration of the person as one who is able to evaluate and re-evaluate the choices which are open to his freedom.

This is in line with what Krishnamurti (1996, 89) says of education,

If we are being educated merely to achieve distinction, to get a better job, to be more efficient, to have wider domination over others, then our lives will be shallow and empty. If we are being educated only to be scientists, to be scholars wedded to books, or specialists addicted to knowledge, then we shall be contributing to the destruction and misery of the world.

And he continues by saying that,

We may be highly educated, but if we are without deep integration of thought and feeling, our lives are incomplete, contradictory, and torn with many fears; and as long as education does not cultivate an integrated outlook on life, it has very little significance.

By following this paradigm, we can now have a sketch of what a humane education which includes deep integration within the human person and not just mere intellectual or skill specialization.

The Three Main Facets of a Humane Education

In order for there to be deep integration of the human person, education must consist of three special facets, namely, normative, evaluative, and transformative education.

Normative Education

Normative education has to do with providing a conception of the good according to how it is understood by a particular (set of) tradition(s). Any form of education must provide a basis or a conception of what the good life consists of and so serve as a moral compass that would guide individual's actions. Such a normative conception of the good life must not, however be, a strict formulation of dogmatic teaching that stifles human freedom but must rather serve as a rough and ready guide – a valuational schema – that guides people toward creative action. Furthermore, such an education must delineate the realm where truths can be observed objectively and where they must be approached with, as

Kierkegaard would say, infinite passion. Such a normative conception of education would thus not entail the possession of objective certainty when it comes to the matters that really matter such as the existential meaning of life and faith but rather must provide guideposts that point towards the possible and rational truth of such areas of human life.

Moreover, such normative conceptions of the good must be balanced out by raising cognizance of the existence of other belief systems that are different but not necessarily inferior to the one that is dominant within one's particular society. Furthermore, awareness must be raised as to the history and numerous historiographies/genealogies of one's deeply held beliefs such that the space for critical questioning and true appropriation of such normative conceptions may be made possible instead of just blind adherence to dogma or the living out of life based simply on ideals inherited as cultural artifacts brought about by one's historicity.

Evaluative Education

The second important facet of a humane education lies in its capability to enable individuals to be evaluative agents when it comes to matters of identity, beliefs, and practices. This entails being able to criticize one's own normative conceptions of the good as well as other conceptions of the good and to decide for oneself which among these vying alternatives one would deeply attach oneself to. Reasoned choice and not blind adherence to tradition should be the norm for affiliation and identification with these schemas of thinking and valuing. Furthermore, the cultivation of such an evaluative capability would also entail within it an openness and not just mere tolerance of other traditions. Thus, it would include a form of hospitality that is more becoming of multiculturalism instead of mere plural monoculturalism where there are no interactions between various traditions that go side by side with one another (Sen 2006, 157). Such an openness would provide the space for the fruitful interchange of ideas and horizons to occur.

Aside from openness and the capability to evaluate conceptions of the good, this form of education focuses on the cultivation not only of horizontal reasoning but also and more importantly, that of vertical reasoning. Put more specifically, vertical reasoning entails the cultivation of the capability to examine the value that individuals attach to things of this world. Thus, a humane education must necessarily be philosophical in nature if we are to follow Josef Pieper's (1963, 98) thought that philosophy consists not in a withdrawal from the things of the world but of a withdrawal from the meanings and values that we attach to the things of the world. This temporary withdrawal from the values attached to the things of the world provides the much-needed space to reflect whether one's valuations are indeed aligned with those that would enable one to creatively flourish.

Transformative Education

Finally, such an education must be transformative of the individual both in his/her individual life as well as in his/her participation in societal affairs. This is important because society is itself the primary domain where such concrete self-actualization occurs. Thus, the development of oneself and society is necessary for the cultivation of one's life and the fulfilment of one's personal projects. Education must therefore lead to integration and praxis, and not just mere intellection and especially not just blind specialization without knowing the ultimate why's and how's involved in such expansion of knowledge and skills. Education, if it is to be done right, must lead towards the cultivation of a sense of social responsibility and solidarity with others such that people exercise their freedom as a form of social commitment instead of merely serving their selfish interests. Such a transformative education can only be brought about through the right balance between normative and evaluative education.

Ultimately, transformative education is none other than ethical education that enables one to actualize one's reasoned conception of the good in society where other people are also actualizing their own conceptions of the good. These reasoned conceptions of the good are themselves the result of one's inherited traditions and the process of a humane education that would hopefully result in the cultivation of conceptions of the good that are in line with the dignity of the human being and which provide the space for creative human flourishing. The individual's conception of the good must in turn be open and sensitive to how others conceive the good life and it is only when such creative interaction between individuals occur that education can truly be said to have achieved its purpose.

Conclusion

In this article, I have tried to show what a sketch of a humane education would look like based on the description of the human agent as a *persona* that seeks to actualize itself according to his/her conception of the good. Such an education must consist not merely of the cultivation of intellectual and practical skills but must fundamentally entail integration of the human person. This integration is made possible through transformative education that is brought about by the dynamic interaction between normative and evaluative education that cultivates one's capability to reason out and conceive of a good life that is really conducive to self-flourishing. This is the primary means and is itself an end toward the expansion of the substantive freedom of people to lead the lives they value and have reason to value.

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Intellectual Property, Globalization, and Left-Libertarianism*

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Abstract: Intellectual property has become the apple of discord in today's moral and political debates. Although it has been approached from many different perspectives, a final conclusion has not been reached. In this paper I will offer a new way of thinking about intellectual property rights (IPRs), from a left-libertarian perspective. My thesis is that IPRs are not (natural) original rights, aprioric rights, as it is usually argued. They are derived rights hence any claim for intellectual property is weaker than the correlative duties attached to self-ownership and world-ownership rights, which are of crucial importance in any left-libertarian view. Moreover, IPRs lack priority in front of these two original rights and should be overridden by stronger claims of justice. Thus, as derived rights, IPRs should not benefit of strong enforcement like any original rights especially if it could be in the latter's detriment.

Keywords: intellectual property rights, ideas, expressions, self-ownership, world-ownership, justice, left-libertarianism, John Locke

Left-libertarianism is an appealing philosophical doctrine for conceptualizing ownership rights. In some respects, it is simple, minimal and it does not demand a strong metaphysical or ontological commitment. On the other side, as it was sometimes argued, left-libertarianism lacks coherence (Fried 2004) and hence it could not be a realistic foundation for normative claims concerning property entitlements in a complex global economy.

My aim is to construe and to some extent to enlarge the left-libertarian way of thinking such as it could offer theoretical soundness for inquiring contemporary intellectual property rights (IPRs) and their global or international regime. IPRs are some of the most questionable positive rights, a *form* of state and international regulation (Lemley 2015) that is often alleged to produce injustice. Left-libertarianism is a liberal-egalitarian conception of justice and impartial entitlements (Vallentyne 2000; Vallentyne 2012) which has arisen from the long natural rights tradition of moral thought. I use left-libertarian thinking as a guiding tool in questioning positive through natural conceptions of rights, and, equally, to establish if and how moral natural rights precede any positive entitlement to ownership in the realm of human ideas and expressions.

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The role this particular theory of justice plays in my essay is to make comprehensible the limits of entitlement when it comes to intellectual property.

The first section is a survey of a feasible contemporary, *i.e.* left-libertarian, branch for the natural rights conceptual framework. The second one is a general attempt to apply the original natural rights frameset to intellectual property. The third part concerns a descriptive attempt to explain the apparition of a global regime for intellectual property. My final step is to argue against granting *strong* IPRs in the field of human creative and innovational endeavor. In order to develop my critical approach I establish some points of inquiry, from a theoretical level to more applied questions of justice.

Legal scholars use a technical terminology and their aim is to literally put the law 'at work' in finding answers for practical decisions. My purpose is different: to address the problem of entitlements in the case of intellectual or ideal objects from a conceptual point of view, hence any recourse to actual rules governing intellectual property will be limited. Certainly 'conceptual' does not mean only 'ideal,' but also it is not the case of providing tools for legal examination of IPRs. The emphasis is put on the moral stance of these rights.

How To Think Like a Left-Libertarian?

Apparently, a left-libertarian has, in Hegelian terms, a double consciousness which struggles against itself. She has to cope with two different sources of this way of thinking: a conception of self-ownership and a demand for world-ownership – jointly, equally or as common use. It is hard to conciliate these two sources; in fact, here resides not only the crux of the modern political problem, *i.e.* how to match freedom and equality (Otsuka 1998), but also one of its solutions, maybe one of the most satisfactory and feasible one. There is no room for taking a categorical stance in answering questions about the best political theory able to give dual priority to freedom and equality; I assume beforehand the incompleteness of every theory. The justification for choosing left-libertarianism is not to be found in its wholeness or integrative capability, but in its logical robustness and fine malleability in applied questions of justice.

A special feature of libertarianism in general is its persistence on *moral rights* and *enforceable* (interpersonal) *duties* (Steiner 1994; Vallentyne 2012, 158). A theory of justice has to deal with what kind of duties are legitimately enforceable thus becoming justified coercions (Vallentyne 2000, 2; Vallentyne 2012, 153). Persons and the world are described in terms of moral relations and their moral standing is based on some original *set of bundles of rights*. Sometimes the set is composed of a single element, a sole bundle, that is, the original self-ownership in which every social existence originates; all libertarians support this bundle. To clarify the issue, even self-ownership is a *bundle* of rights, not a single remarkable one. For example you and I (hopefully) are the unique owners of our bodies and, I might say, minds. Therefore we have a right to our protection and, also, to our personal sphere of movement, activity, and expression in the

world as such without external interference and all this simply because we are self-owners. Moral self-ownership entails a *pure* negative conception of liberty (Steiner 1994, 33) which opens the question of self-governance; consequently, self-ownership must not be equated with autonomy even if their connection is nevertheless real when we see self-ownership as the ability of protecting our own conceptions about how to pursue goals in our life (Kymlicka 1990, 112). In some way, that's the discreet charm of philosophical arguments based on self-ownership: you don't need to be committed to a strong metaphysical conception of the self (as in communitarian or virtue ethics theories). 'Self' is just a linguistic prefix used to state an exclusivity relation the agent has with something or in doing something. At this point, G. A. Cohen account of self-ownership could shed light on the matter. The first thing to say is that he makes a distinction between the concept (which could lack coherence) and the thesis of self-ownership (that might be accepted or rejected but it still conserves its consistency) (Cohen 1995, 209–10).

According to the thesis of self-ownership, each person possesses over himself, as a matter of moral right, all those rights that a slaveholder has over a complete chattel slave as a matter of legal right, and he is entitled, morally speaking, to dispose over himself in the way such a slaveholder is entitled, legally speaking, to dispose over his slave. (Cohen 1995, 68)

By making an analogy with slave ownership, Cohen's definition brilliantly avoids the problem of ontological regression or reliance on other moral conceptions. For him, the term 'self' is used precisely for its reflexivity (Pateman 2002, 25) and its capacity to support a logical relation of identity (in a Leibnizian sense): "what owns and what is owned are one and the same, namely, the whole person" (Cohen 1995, 69). This position entails that it is impossible to separate a person from the self-ownership on her body since they are indiscernible. Her choices are expressed in terms of a range of possibilities to conduct actions and to follow goals by means of her body. To move on, I deem Steiner's definitional condition to be similarly informative on the issue. For him, *original* self-ownership means to have "unencumbered titles" to our bodies and "our bodies must be owner-occupied" (Steiner 1994, 232). An "unencumbered title" of "full liberal ownership of our bodies" (Steiner 1994, 232) means we don't have any duty toward others or ourselves in disposing of our bodies: "our original domains contain impermissibly obstructable liberties to dispose of them and their parts as we choose." (Steiner 1994, 233) Steiner emphasizes the idea of full capacity of choice embedded in this *original right*.

'Self' recursively points to the agent, but it isn't clear if we are talking only about a human agent. A cat doesn't have self-consciousness but it does self-cleaning several times a day without accepting to be cleaned by another agent. Many times the grammatical use of 'self' is vernacular, or natural, and it keeps a healthy distance from 'scholastic' metaphysical quarrels. In this sense, self-ownership is just a way to attribute exclusivity *in* and identity *with* the

possession. In another sense, its paramount importance in a system of moral rights demands to link it with self-governance, and with autonomy or self-determination. By some means, it is intimately related with basic human rights (Pateman 2002, 22). But how?

A peculiarity of all libertarian theories is how they construe moral rights as *property rights* regarding everything, from persons to external resources. In the case of moral self-ownership, the bundle of rights relevant to my inquiry is approximated by the next list: control rights, rights to compensation, enforcement rights, rights to transfer, and immunities to nonconsensual loss (Vallentyne 2000, 2–3; Vallentyne 2012, 154; Vallentyne, Steiner, and Otsuka 2005, 203–4). A right to control over the use of your own person is of paramount importance; it also constitutes itself as the ground for a correlative duty for others to abstain from interfering with a person without her prior authorization or consent. Rights to transfer are also a part of a full self-ownership view (Vallentyne 2012, 155). The rights to compensation and immunities are indeterminate with regard to nonconsensual loss, but they could be specified in each political constitution when it comes to make a positive move from the moral realm to the political one, therefore weakening self-ownership. The sole condition to keep the normative force of self-ownership even in a weaker design, *i.e.* less rights in the bundle, is to keep the set compatible with the same rights of other persons over other things in the world (Vallentyne, Steiner, and Otsuka 2005, 205). On the moral ground, the idea we have to keep in mind is the protection (Vallentyne 2000, 5) against unjustified harm and mistreatment this bundle of rights offers to every person. And if it is plausible that only each individual must be morally ‘in charge’ of her person and body (Vallentyne, Steiner, and Otsuka 2005, 208), the thesis of self-ownership is worthy to be taken into account (Vallentyne 2012, 161) despite the indeterminacy of its compulsory bundle of rights.

The second thesis of left-libertarianism, *i.e.* *world-ownership*, is an independent assumption for grounding the moral domain; it does not follow from the self-ownership thesis (Vallentyne, Steiner, and Otsuka 2005, 208). In Steiner’s words (1994, 235–6), ownership of external (natural) resources is our *second original right*. It is necessary to fulfill the demands of impartiality and equality in self-ownership, even if we are taking into account only a weaker form. And there lies the difference between right and left-wing libertarianism; for the latter branch, the ‘moral power’ of agents in unilaterally acquiring and using natural, external resources (Vallentyne 2012, 161) is feebler than for the former. Without doubt, for what is made from self-owned things, like our person, we have an “unencumbered title,” Steiner affirms (1994, 235), but he further continues: “Nothing can be produced by labor alone. Nothing can be made *ex nihilo*.” We make things, and hence our social existence, by using “extensional factors, [...] already owned or as yet unowned” (Steiner 1994, 235); an equal original right to property – the only way we can save the compossibility of

rights¹ – entails entitlements in “equal share of (*at least*) raw natural resources.” (*e.m.*) (Steiner 1994, 236) If self-ownership is the expression of the only moral status that could protect persons from unjust “non-consensual interference,” then egalitarian ownership is the most defensible position to put into practice, or, at least *effective* (Vallentyne, Steiner, and Otsuka 2005, 209; Jedenheim-Edling 2005, 303–4).

Equality in access, equality in shares, equality of opportunity – what kind of equality to endorse from this broad spectrum? This is not only a methodological question; it actually conveys the pluralism of the left-libertarian manner of thought regarding world-ownership claims; they are translated into a bundle of rights capable to actualize the claim of security (Vallentyne 2000, 7; Vallentyne 2012, 162) embedded in the self-ownership moral status. Natural resources are not the only set of objects towards which world-ownership vector aims, but, at this point, this is less important. World-ownership has a condition to pass: it has to be practical, *i.e.* it doesn’t need to meet the approval of other persons (that’s why the proposal of collective consent in using resources is pernicious), and it should be practiced “without any loss of the rights of self-ownership” (Vallentyne 2000, 7). As it was argued against Cohen’s position (1995, 94–8), an equality of condition could be accomplished without the loss of an effective self-ownership (Jedenheim-Edling 2005). Also, Otsuka (1998) showed that a struggle between self-ownership and equality is “largely an illusion” and both Nozick and Cohen were wrong even though their arguments are structurally opposed. For self-ownership, as an *exercisable* bundle of rights, to be acquired it has to let the world open; the reasons for this claim are at least twofold: one needs to access enough resources to maintain her autonomy and independence from others (Otsuka 1998, 84) – so she could not be subjected in various ways by other persons – and one needs to secure her access in order not to be marginalized and so to be easily exploited by others (Jedenheim-Edling 2005, 288).

As a left-libertarian, one aims to stress the importance of entitlements to natural resources as a way to overcome the differences between human physical and mental capacities but not as a way to correct the structure of “offices and positions” in a society (Vallentyne, Steiner, and Otsuka 2005, 213). Being concerned with an impartial and universal system of choices expressed in rights and duties, left-libertarianism does not take into account territoriality and local institutional arrangements (Steiner 1994, 262, 265): “our moral duties to respect other person’s rights and the rights derived from them don’t suddenly evaporate at international boundaries. [...] These duties are global in scope.” The conditions for natural resources acquisition are seen as preceding the Rawlsian questions of fairness in allocating the “fruits of social cooperation” (Vallentyne, Steiner, and Otsuka 2005, 213).

¹ To the compossibility of rights, another Leibnizian concept this time adopted and adapted by Steiner into his theory, I will return in the last section of my essay.

A brief overview of the most plausible left-libertarian proposal for effective world-ownership is necessary before analyzing the origin of this manner of thinking and how it would work for assessing IPRs. The proposal stems demands for equality in two senses: firstly, one can use any of the unowned resources if and only if “one leaves an equally valuable per capita share of the value” of the unowned resource for others (Vallentyne 2012, 164); secondly, each appropriation should not endanger the opportunity for the well-being of others, and this opportunity must be “at least as good as the opportunity for well-being that one obtained in using or appropriating natural resources” (Vallentyne 2012, 164). If the two provisos are not fulfilled, one has to pay a rent or a tax to a “social fund” responsible for ensuring equal opportunities and, ultimately, “equal gains in well-being” (Vallentyne 2000, 10–1).

Ideal Objects, Between Self-Ownership and the Commons

Until now, in a deliberate move, John Locke wasn't named at all, but my sharp readers could have predicted the next step would be to set up the debate around ideal, intellectual objects in his classical perspective of natural rights. Left-libertarianism is a successful contemporary attempt, I believe, to interpret Locke in his own right and this was one of the reasons I presented its main theses; the second was to prepare the ground for taking seriously the Lockean insights about claims and entitlements regarding intellectual property. Even without knowing the actual role a Lockean theory of entitlement to property plays inside the justification of IPRs, choosing Locke as a companion and inspiration is obvious: his theory can be used in judging the process of appropriation in the realm of ideas and expressions (Tavani 2005; Gordon 1993). More interesting is to query not *why* this theory is thought capable to take into account the realm of non-material artefacts but *how* different scholars found it, in different ways, ready to be used as a heuristic device. Somehow, it is not clear how Locke could answer to contemporary claims involving IPRs, but it is evident why we resort to his tempting theory. I'll start with what is obvious and then I will argue that Locke could have not endorsed *full or strong property rights* in the appropriation of ideas through particular expressions.

John Locke established the paradigm for property entitlements in his *Second Treatise of Government*. Naturally, he had in mind just a specific case – land ownership and physical goods provided by its exploitation – and it is not without difficulty to see how his theoretical account could or should be applied to ideal objects. In order to explain the apparition of private ownership his theory begins from a famous premise: we are self-owners of our bodies and persons – “every man has a property in his own person: this no body has any right to but himself” (Locke 1980, 18). A second premise, sometimes concealed by his interpreters, states the common ownership of the natural world as a gift from God who „*has given the earth to the children of men; given it to mankind in*

common.” (Locke 1980, 18)² Those premises are joined by an assumption, a problematic one (Nozick 1974, 174–5): a self-owned person can mix her labor with natural, unowned resources³. This kind of blending is the main way of claiming private property through appropriation, but it is not a sufficient condition. Indeed, for someone to be entitled to private property she has to follow two provisos which limit the scope of ownership and also justify its uses over time. The provisos – of sufficiency in access and of “no waste” in use – finally set the paradigm of property.

For Locke, there is no original property right in things when they are still in the commons: “no body has originally a private dominion, exclusive of the rest of mankind, in any of them, as they are thus in their natural state” (Locke 1980, 18–9). Property, or “private dominion,” stems from an acquisition process based on *purposive* (Gordon 1993, 1547) and *persistent* labor, and not as a result of mere luck or chance, Locke seems to state. Even so, labor is not the sufficient condition for claiming property (Tavani 2005, 90) mainly because one has to use *external* resources in order to alter and thus transform them into something either new or useful (Hull 2008, 13) – this process of alteration is narrowed by two general conditions (that I will soon make precise). Labor is just a means to an end; Locke doesn’t validate a cult of labor, but he sees productive endeavor as rational necessity for biological survival (of the body) and for social existence of any human person.

Let us examine a bit how labor could be understood in the case of ideal objects. It was suggested that there are important differences with respect to kinds of labor involved in producing physical and ideal objects (Tavani 2005, 89): the latter is not burdensome and ideas often just “come into the mind” without any prior effort; moreover intellectual labor is joyful and sometimes cognitive inception doesn’t contain any hard work. IPRs critics regularly shape arguments against intellectual property claims stating the enjoyment of a mild and un-risky work. But their opinions seem far-fetched for anyone who struggles to give new expressions to ideas or to innovate to any extent. Furthermore, even Locke put the intellect at the core of every industrious labor. It is not hazardous to affirm that any purposive and effective labor has an intellectual, that is, cognitively rational, dimension (Hull 2008, 14–5). In the *Essay concerning human understanding*, Locke openly affirms: “all Reasoning is search, and casting about, and requires Pains and Application” (Locke 1975, 52) and in another part of his work he confirms that for seeking and discovering truth humans must “employ

² It is debatable if we can apprehend and use the Lockean perspective neglecting its theological foundations by treating it just as a secular moral and political theory (Hull 2008).

³ Nozick’s question, “Why isn’t mixing what I own a way of losing what I own rather than a way of gaining what I don’t?”, I believe has only an heuristic role in explaining Locke’s metaphor. It is not a counter-argument against the possibility of transforming resources through labor and *as a result* of this activity to claim ownership. Nozick’s aim was to emphasize that we don’t have to take Locke’s metaphor literally.

all that Industry and *Labour* of Thought” (*e.m.*) (Locke 1975, 450). Labor must have a conscious intention, what we might call today *intentionality*, in short, labor has a purpose; intellectual activities by excellence are laborious and they presuppose not only purposiveness or volition, but also a “pain” in seeking to understand ideas and to create their expressions.

Mixing labor – when *intentional* labor is possible due to self-ownership – with something exterior doesn’t constitute a sufficient condition for any claim to ownership (Nozick 1974, 174–5; Tavani 2005, 90). Gordon (1993, 1545) insists that “labor is not itself property,” but we have to bear in mind that Locke’s argument for property is based on the notion of *harm*: does appropriation or, on the other hand, intrusion or infringement (in case of ideal objects) produces an unjustified or wrongful harm? (Gordon 1993, 1545) Locke proposed a class of natural duties and liberties that generate, on their turn, moral claims and entitlements (Gordon 1993, 1541–3); the duty *not to harm others* is situated within this class as “lexically prior” (Gordon 1993, 1542). The duty of non-interference with others’ ownership is only *conditional* and it could be overcome by the first duty of non-harming in cases when someone’s ownership endangers the life of other members of the moral community. There are many ways in which appropriation could harm – the two provisos’ role is exactly to limit maltreatment and worsening.

The sufficiency proviso states that in order for someone to have “private dominion,” *i.e.* “unquestionable property” that “excludes the common right of other men,” it must be “enough, and as good, left in common for others.” (Locke 1980, 19) If this condition is not fulfilled, then any claim to ownership is questionable. So, what to question in claiming intellectual property? It could be argued that it is impossible to apply this proviso to the realm of ideal artefacts since they are “qualitatively different kinds of objects” and the risk of exhaustion or depletion is low in virtue of their ontological nature (Tavani 2005, 92). The proviso has to be construed such as its rationale is to offer fairness and even equality in access to external resources held in common and, equally important, the logic of appropriation must follow the priority of the *no-harm duty*: by any appropriation nobody should be affected “by being made worse off” (Tavani 2005, 91). According to the Lockean proviso, in Nozick’s interpretation (1974), a rightful appropriation of un-owned objects or resources is possible if “no one’s appropriation of an object *worsens* the situation of others.” This position implies “a sort of egalitarian restriction” and the predisposition to find an “appropriative proportion” (Steiner 1977, 127–8). In case of IPRs the public could question if the creators’ claims are, as a matter of fact, worsening the general situation of other rational and sensible, cultural beings. IPRs are imposing duties on the public whose equal abilities to create or to explore old and new cultural horizons are thus limited (Gordon 1993, 1563–4). In some ways, IPRs, by their restrictions, not only block access to cultural development, but are leading to an attrition of commons (Tavani 2005, 93) particularly in the case of digitization

and of rights expansion in time. Gordon (1993, 1567–9) detects two other ways of worsening the public's situation: firstly, an innovation – either conceptual or practical – changes people's condition and could make them dependent on the right holders who can, in their turn, deny the new instruments for survival and flourishing; secondly, in a media culture, expressions and ideas can infiltrate people's minds without their consent: "being forbidden to copy," Gordon (1993, 1569) writes, "thus may require one to choose between silence and deception." An equilibrium between (too broad or strong) IPRs and an open space of intellectual development based on commons – or the public domain – is essential if we endorse a democratic and equalitarian right to expression and thoughtful understanding. One, either an actual being or a future person, can be harmed by strong IPRs in her activity of intellectual understanding and meaningful interaction with the world (Gordon 1993, 1556).

IPRs could also have a "spoilage effect" since they act as monopolies that induce "artificial wasteful scarcity" (Hull 2008, 40). The spoilage proviso is not very often brought into debate by Lockean scholars, but I believe it is equally or even more important than the first one in assessing the limits and justifications of IPRs. Locke writes:

As much as any one can make use of to any advantage of life before it spoils, so much he may by his labour fix a property in: *whatever is beyond this, is more than his share, and belongs to others.* Nothing was made by God for man to *spoil or destroy.* (e.m.) (Locke 1980, 20–1)

The avoidance of spoilage is a post-production condition. It comes as a conclusive test for any claim of ownership after the mixing of labor and external resources took place. In the case of intellectual property, chiefly because an ideal object could not be over-consumed and it is non-rival, a monopoly leads to waste. Circumventing an idea or an expression is not producing a material loss, but a loss of all alternative uses of one ideal object beyond the claimant's intention (Hull 2008, 27). Ideas are not optimally used under a strong and exclusive intellectual property regime, *i.e.* they produce enjoyments in life only for people having access to them. Restricting access is a perverse kind of waste in a world otherwise naturally (or by default) rich in ideal objects. The entitlement regime of intellectual property generates spoilage in an artificial manner through direct or indirect control, that is, monopoly costs, and anti-commons (Hull 2008, 30).

Locke's framework seems to be less concerned with ownership-based-on-labor entitlements than with justice claims in using and abusing external resources. One main Lockean idea is the profound reliance of people on commons. For him, perhaps for theological reasons, the Latin dictum *ex nihilo nihil* was a beacon in assessing the just regime for property claims to become property entitlements. His interest was with the "normative status of institutional arrangements" (Hull 2008, 7) which take into consideration both the human endeavor and the necessity of keeping open access to external

resources in a scheme where the no-harm duty is prior to any claim. In the specific case of ideal objects the 'ex nihilo' condition is *prima facie* a deterrence for granting strong property entitlements (Hettinger 1989, 38). Locke was an empiricist who strongly argued against innate ideas and principles; the human mind is a *tabula rasa* where ideas have to come from outside by means of sensations. Complex ideas and inventive production, including manual labor, depend on previously existing resources (Hull 2008, 17–8; Hettinger 1989, 38–9); consequently, the value of an object is not a mere consequence of rational labor. The Lockean provisos' requirements should be understood as giving priority to the public's claims (Gordon 1993, 1538) and they should do justice to the equal interest of the public in developing complex ideas for the reason of enjoyment in their intellectual lives. A broad right to expression for everybody should prevail (Gordon 1993, 1570) if we have a strong commitment to equal interest of any rational being in understanding, interpreting and, finally, coping with the world.

Until now I presented the normative Lockean tradition of natural rights in a left-libertarian vision. The next section is more descriptive in its purpose and range. It depicts the global regime of IPRs as well as the critical questions that naturally arise from the depicted status-quo. I will further address all of these questions in the final section.

The IPRs International Regime⁴

I assume that in the informational economy we live in the most important resources are information and ideas able to generate knowledge. We live in a *type*-economy, where the *token* can be easily reproduced if you can control the *type*, the intellectual origin of all things.⁵ That's why I propose to the reader to consider central to any global informational economy the complex institution of IPRs, from the individual to the global level.

Intellectual property is a highly debated and contested concept which gained much attention in the last decades. It was even argued that in our post-industrial world, where the production of intangible goods is at forefront, intellectual property is an anachronism producing inconsistent justifications and rules (Voinea 2013). Although researchers have not yet settled on a clear and distinct definition, due to the many different perspectives from which it can be

⁴ This section is based on a previous research on intellectual property and global justice I led in Ștefănescu and Vică 2012.

⁵ The industrial modernity imposed the urge to understand, sociologically and philosophically, the meaning of 'labor' and at least two main philosophical currents embraced and focused on the nature of labor in producing social existence, *i.e.* Hegelianism and Marxism. Contemporary informational-based global society put emphasis on the notion of 'work,' of creating immaterial objects through cognitive activities involving the use of previous knowledge and new information. About the distinction labor – work, see Arendt (1961). Of course, this doesn't mean exploitative, manual, mechanical labor is not present nowadays.

approached, intellectual property is typically seen as a bundle of deontic powers – obligations, permission and interdictions – that arise in regard with the creation of knowledge, be it scientific, artistic or technological, and the way this newly created knowledge permeates society. This set of rules imposes various constraints on actors, depending on the context. The whole debate around intellectual property, including equal access and information responsibility, can be rephrased in deontic, action and epistemic terms as it was also proposed for computer ethics (Van Den Hoven and Lokhorst 2002). To make things more clear, I will offer an example. Patents can be seen either as *a right* to exclude others from the use of information (thus obligations are imposed on others to not use the information concerned) and as *a duty* to make information public (so they also set permissions to access information, but not to use it).

Two other important characteristics of intellectual property, mostly overlooked, determine its controversial nature: it is always *contingent* and *undecided*, meaning that any attempt of trying to verify or falsify it is doomed to fail. But its truly contended core rests in its contingent character, a feature that determines the constant change and evolution (by an artificial societal selection) of its rules and norms, without even a minimal concern for the attainment of both global or national justice and fairness. Thus, the aim of the institution of intellectual property is divergent from the ideals of (global) justice, a fact that raises many societal concerns.

The World Intellectual Property Organization is one of the biggest specialized transnational agencies created “to encourage creative activity, to promote the protection of intellectual property throughout the world.”⁶ But, one can ask, why is intellectual property so important, that it requires no less than seventeen agencies working under the United Nations’ patronage? The answer can be found in WIPO’s psalm-sounding motto “IPRs are the key economic resources of the future” (Sell and May 2001, 468). Although this sounds like music to the ears of big companies, it conceals a deep and complicated conceptual muddle: first and foremost, there is no definition of IPRs that could pass logical tests; secondly, its scope is highly uncertain and thirdly, there is no consensus on the international level with regard to how the legal framework should look like. The most affected by all these incoherencies in the discourse surrounding intellectual property are the innovators, whose incentives are constantly transformed, and this reflects directly into the trade system.

A look at the history of intellectual property reveals a tension between protection (& exclusion) and dissemination (& competition) (Sell and May 2001, 468). The first voices that spoke against intellectual property arose during the *Ancien Régime* against the *privilège du Roi*, a sort of monopoly offered only to several book printers and sellers. This contestation hid itself under a more subtle and insidious form, book piracy – which appeared on the basis of already

⁶ The full text of the Convention establishing the World Intellectual Property Organization (1967, 1979) could be found at this address: <http://www.wipo.int/treaties/en/convention/>.

existing informal networks of communication. *Craque, mauvais propos, bruit public, on-dit, canard, libelle* are some of the French words conserved in the contemporary oral language that stand as a proof of the tension between free speech and exclusive privileges to knowledge. In 1710, the United Kingdom became the first country to pass a copyright law, The Statute of Anne, which was the result of a struggle between authors and publishers. But more than that, The Statute of Anne was a form of boycotting the royal intervention in the market of ideas. The USA adopted the same kind of laws between 1850-1875. During this period two antagonistic groups coagulated – represented by those defending the protection of innovation by patents and those demanding an international system of free trade – giving rise to deep tension (Sell and May 2001, 483). But the most debated and anathematized attempt of regulating intellectual property was The Agreement on Trade-Related Aspects of Intellectual Property Rights and the rejected proposal of Anti-Counterfeiting Trade Agreement (Vică 2012). What complicated things even further was the attempt of establishing an international regime of IPRs, a trend that started in the 19th century with the Berne Convention. Thus, Intellectual Property has a convoluted history, and the prospect of ‘cosmopolitan peace’ seems very far away.

“Compromises and contingency” were the main drives for the development of intellectual property laws (Sell and May 2001, 496). This is due to the fact that intellectual property is a historical concept or construct (Sell and May 2001, 473) that arose from the clash of many interested parties like mercantile interests, domination positions, ideologies, and technologies. But, on the other hand, providing access to knowledge is a matter of historical contingency as well. The justifications of the two institutions vary greatly. Intellectual property as ‘property’ was always regarded as an unhistorical, essentialist and aprioristic entity. In contrast, the preoccupation for building a global knowledge society is seen as a deeply historical endeavor, with emphasis on historical arguments (including those that must take into account future generations) and contingencies (that is why the technological progress is expected).

This history of “compromises and contingency,” in other words the process of institutionalization of intellectual property, has many stages (Sell and May 2001, 468) and is unlikely to reach a final conclusion. Those in power, who have the ability of controlling technologies and, implicitly, public speech, are brought to the forefront of the main theatre of this war by the dialectical movement which is driven by ideological shifts and technological change.

In the literature, the history of intellectual property is interpreted from three perspectives: realist, functional and critical (Sell and May 2001, 469–74). In the center of the first perspective lays only one kind of actors, maybe the most powerful: the states, which are seen as acting monolithically, neglecting emerging important groups, as well as the old clash between groups in power and the newcomers (Sell and May 2001, 470). The second perspective, the

functionalist one, is holistic on the grounds of accepting the institutional arrangements produced by settlements. But, it is important to notice that it fails in the attempt of pinpointing the interest, power and ability of actors. Functionalist theories stress efficiency in the process of establishing property rights and ownership (not only in tangible assets, but also in ideal objects) and also embed into the characteristic aforementioned the regulatory condition for the institution of property. The downside of this kinds of perspectives is represented by an inability of clearly pinpointing what efficiency is (Sell and May 2001, 471): who defines efficiency, from what point of view, in what dimension and for how long? The main role of property, and its crucial importance, are derived from its ability of enhancing coordination between individuals. But, a question arises naturally: would efficiency be so important without coordination? In the case of information, efficiency is derived from protection and exclusion (in other words, the control of information) through IPRs (Sell and May 2001, 471). But this perspective does not take into account an important aspect of the informational resources wars, the clash between control and dissemination. Thus, it fails to optimize the two different efficiencies (or expectations of).

The third perspective, the critical one, which I hereby adopt, stresses the interaction “between ideas, material capabilities and institutions” (Sell and May 2001, 473). Unlike the other two approaches, this one considers the legal framework of intellectual property as just another actor between the rest, represented by theoretical and artistic pieces and technologies or creators/innovators. Moreover, it sees intellectual property as an institution caught in a big net of other institutions, to which it is connected. Thus, technologies are improved starting from other technologies and creators belong to a long history of ideas and their instantiation.

After I presented the institutional mechanism of building intellectual property, let me make a clear statement: intellectual property creates *artificial scarcity*, unlike physical property. The main reason for this is that knowledge and information are not scarce in nature. They stand beyond consumption, due to the fact that they can accumulate indefinitely and cannot be exhausted. Another important characteristic is that knowledge and information produce mostly positive externalities. This is reflected by the debate that took place in the 1960s, between Arrow and Demsetz. Their subject matter was the market efficiency of information, understood in a broad sense, ranging from data to knowledge. Arrow boldly stated that any new information “should be available free of charge” (Arrow 1962, 616–7). The welfare point of view assumed that this would generate *optimal* use of information. The downside was represented by the disappearances of the incentives much needed by creators to produce any new piece of information. What would rectify this deficiency? The answer lays in the imposition of artificial scarcity of information, which would be suboptimal, but

still efficient for innovators. Still, the problem of justice remains at the periphery of such kind of approaches.

A Left-Libertarian Background for Criticizing Intellectual Property

In the beginning of this last section I will make a distinction and introduce an assumption in order to clarify the left-libertarian background I'm proposing. My distinction is aimed at separating *ideas* and *expressions*. An idea can take a myriad of forms, *i.e.* expressions, but it can't be reduced to a general or unique expression. As Locke (1975) famously said, "ideas come into the mind," they feed the human cognition which, consequently, develops them into complex ideas. For the sake of my argumentation, by 'idea' I understand any conception, notion, thought or impression that can be expressed by means of opinions, beliefs, and intentions, and in pieces of reliable knowledge. Indeed, this distinction is debatable. Hettinger (1989, 32–3) affirms that sometimes it is hard to find a pure demarcation between content and style, especially in artistic mediums where *how* and *what* are said to be intricate. In my view, both ideas and expressions have content but style is something specific to each mind travelling between ideas and their understanding. Much closer would be the analogy with another distinction between scientific laws and principles and their technological applications. Scientific laws or patterns – especially in mathematics and physics, but also in chemistry, biology or sociology – are discovered, extracted from the external world through careful scrutiny. Ideas are general, expressions are particular to each intellectual laborer who articulates *or* understands an idea. Information and data, in a mathematical and physical sense, share with the formers their ontological nature. Ideas are naturally spreading and travelling from mind to mind, they have to be discovered, approximated and fixed through expressions. My assumption for the rest of this section considers data, information and ideas as raw resources necessary for any intellectual effort. Ideas could not be, logically and also physically, privately owned; they are built and transmitted collectively and particularly instantiated in expressions. World-ownership includes, in my view, ideas as both unowned and naturally endless resources.

How should a left-libertarian look at IPRs and *what* should she ask about the system of IPRs as bundles of rights and correlative duties concerning ideal objects? Before answering this question, let us go back to the argument of Wendy Gordon (1993, 1570) for the necessity of a Lockean proviso in the realm of ideal objects. For her, each creation changes the world as such hence it changes the person's situation – this is the fundamental premise. A second premise states that everyone is a creator in understanding as well as in interpreting the world. But IPRs as control rights make the second, the third, etc. until the last creator 'less well off' in their construal of the world. From this we deduce that the freedom of subsequent creators is *limited* by intellectual property impositions. Let us remember that the second premise states equality of opportunity in the

understanding of the world. Gordon arrives at a normative conclusion: we should ensure all creators a broad right of expression precisely for the sake of preserving their equal compatible freedom in pursuing their intellectual goals. And this is exactly what the sufficiency Lockean proviso does even in a world of ideas and information.

Both Lockean provisos – of sufficiency in access and of limiting waste – are united within the left-libertarian framework in a mechanism for ensuring the realization of effective or robust self-ownership by means of equal chances and opportunities in the use of unowned resources. This choreography of rights and duties has the main role to equally preserve and limit human powers in their (extreme) thirst for entitlements. In other words, using moral property rights as a paradigm of justifying justice is the way to ensure against the proliferation of privileges and monopolies. A domain of choices and actions must be coherent with regard to which claims could gain the power of just entitlements. A just appropriation of ideas through specific expressions – artistic or technological – should not exceed the *equal share* a person is entitled to and correspondingly it should not upset *equality of opportunity*; for this reason a strong public domain for ideal objects is prior to private appropriation. Data, information, concepts, thoughts, notions, languages, principles, and methods are more than outfitted in expressions, they are embedded *in* and enacted *by* expressions; many times they could pass as pure personal conceptions nascent in private minds. This is, I believe, the ontological wrongness a ‘romantic,’ exclusivist theory of authorship and innovation made to the realm of ideal objects and to the freedom of understanding and expression paramount for every social existence. Thus the power invested in creators by this theory should be limited by testing their claims. Their fallibility could be proved by some of the ‘conceptual pumps’ left-libertarianism provides us.

(1) To answer the question above – *how* and *what* a left-libertarian should inquire about the actual institutional design of IPRs – I think it would be better off to specify them as distinct questions a natural rights theorist can put to any entitlement regime applied to ideas (Breakey 2010, 210): “Is it universalisable? Does it worsen the prior position of others? Is it consistent with others’ rights? Does it grant powers to impose new duties without prior consent? [...] Do they interfere with the basic natural rights reasons for having property in the first place?” As Breakey (2010, 211) notes, these questions are guiding philosophical investigations on the “scope, strength, and duration of IPRs.” The problem of universalizability is connected in different ways with both consistency of rights and a demand of equal opportunities and avoidance of worsening others’ situation. Let us start with consistency.

(2) Consistent rights are also compossible. The issue of compossibility of actions, rights, and duties is, for Hillel Steiner at least, the main difficulty of any entitlement regime: “the mutual consistency – or *compossibility* – of all the rights in a proposed set of rights is at least a necessary condition of that set being a

possible one" (Steiner 1994, 2). IPRs and freedom of expression are at odds: they are, using Steiner's words, "yielding contradictory judgments about the permissibility of a particular action" (Steiner 1994, 3), that is, a liberty to make sense of the world and a right to control ideas and expressions the others need for exercising this liberty could not be consistent in the same time. In this case, claims put into practice by IPRs are making impossible the free use of the informational content. The control right of a creator is limiting the freedom of using equivalent expressions – especially in case of patents, but it also happens with copyrights – for another creator who could not claim the same right even though she has a *parallel* invention or artistic expression. "Freedom is the possession of things" (Steiner 1994, 39), and in this case the paradox could be solved either by denying any possession, *i.e.* ideal objects should not be possessed because the freedom involved is un-exercisable, or by leveling down one of the claims that generate the conflict. It is easy to demarcate in the case of physical things between people's domains or in plain English, their set of rights: a relation of exclusion between two persons regarding an object could factually, not just normatively be set. To have compossible domains implies that "each person's rights are demarcated in such a way as to be mutually exclusive of every other person's rights" (Steiner 1994, 91). Duty-holders are not deprived of rights; the general idea is to avoid the full burden of duties of only one part of the relationship. Besides that, "duties are identifiable solely by virtue of their controllability" (Steiner 1994, 92): how could somebody control the correlative duties of IPRs without depriving the duty-holders from a large part of their self-ownership bundle of rights? At this point, Steiner has an observation which can be totally applied to the issue at stake: "the important interests persons have both in privacy and in free expression are, as we know, ones which cannot invariably be joint serviced" (1994, 92). An interest in controlling and enforcing property in information, ideas and expressions could not be compossible with an interest in free expression which entails exactly the free flow of information, ideas and expressions.

One could have noticed that I have a hidden assumption: I endorse an evolutionary account of ideas and knowledge and also what was called a "Mertonian ethos" (Radder 2013, 289–90). Under this assumption the demand of consistency gains new wings: not only the *theoretical* issue, the compossibility as logical consistency of different rights of the same domain is worthy of interest, but also the *moral* one. I assume that for the growth of knowledge, progression of science, culture, and technology, as well for the truth-seeking human endeavor only an extreme liberty "to copy, learn, critique, refute, synthesise, subtilise and generally bounce off others' ideas" (Breakey 2010, 221), and universalism and communism of ideas are decisive. If someone wants to universalize strong levels of protection for IPRs, hence their correlative duties to burden other sensible beings, she must recognize the same amount of protection for other ideas and expressions in order to be *morally consistent* (Breakey 2010, 218). But creation

is not *ex nihilo*, so, IPRs holders extract information and ideas from a common heritage and from the free naturally occurring flow of ideal objects. To keep the regime of IPRs consistent, in both the ways articulated above, the delimitation between public domain and owned ideas and expressions should be institutionally redesigned in favor of the former and the equality in opportunity for expression must be translated in equal rights for creators that independently generate or stumble upon same ideas.

(3) I believe the 'romantic' theory of a genuine individual and exclusive creativity is both incorrect and doomed to fail in our networked global society. My philosophical interest is to show why it is incorrect in a left-libertarian background. The vindications of IPRs as generated solely by self-ownership rights is fallacious; in practice, the personalist stance, *i.e.* creation *originates* solely in me, as a person, guides this vindication and not a natural rights theory, as it is wrongfully assumed. Copyright and patents could not be seen purely as extensions of a full self-ownership right. They are derivative or secondary rights vindicated by a purposive labor one has done in expressing hence extracting information or ideas from the unowned resources. As a matter of fact, intellectual works are produced using an incredibly big amount of other ideal objects. One needs language, vocabulary or scientific patterns and laws as well as already objective experience, that is, knowledge previously expressed and instantiated in a medium, to build her own way of understanding the world. An access to all those prerequisites of creativity is a necessity for creation; just the equal entitlement to this common pool of education and knowledge ensures the possibility of intellectual labor.

For the sake of the argument, let us suppose that someone is lucky enough to express ideas without any prior immersion in the common pool of knowledge. Could she claim univocal ownership? There are two reasons for denial. Firstly, luck is not enough for being entitled to ownership, as John Locke and any left-libertarian would affirm. Luck is not a result of purpose and it does not cancel a duty towards other fellow beings in not worsening their situation. Secondly, expressions are worthy only when they are made public, when they enter the public space of ideas where debate, criticism and quotation are affordable. If an idea has no real value outside the creator's mind, it is just not worthy of protection. One can argue against this point of view pointing in the case of trade secrets: they must be kept undisclosed in order to keep their value. But their ownership is founded exactly on their secret nature.

IPRs holders often claim total control of their works, rights to compensation, enforcement rights and an immunity against the nonconsensual lost. But those are part of the bundle of the *original* right to self-ownership (Vallentyne 2012, 154), not rights regulating private ownership and use of objects produced through labor and external resources. To sum up, IPRs holders often claim rights which are *like* self-ownership in circumstances when original

self-ownership is not at stake. In this sense, they are “over-appropriators” (Steiner 1994, 268).

(4) The other way around when we concentrate on original rights is to question if IPRs sometimes undermine self-ownership on account of their strength and indeed they do interfere with other people’s bodies and minds. IPRs demand exclusivity and this right to control how, where and when a person can use ideas and expressions is puzzling. Why? As it was noted before, the whole concept of ideal or intellectual object is based on interference (Breakey 2010, 217): ideas circulate from mind to mind, they do not need physical support for their instantiation. Exclusivity and publicity are at odds in the realm of ideal objects. To control the use of an expressed idea means to control other minds and bodies, which, on a left-libertarian background, is morally wrong. Also, IPRs make redundant the right to transfer, *e.g.* if the right holder has this right then even if I use my memory to instantiate the cognitive content of an expression or idea I am not allowed to transfer it to you by word of mouth. IPRs holders entrap others in duties they did not consent to. Enforcement rights are even trickier: how to enforce intellectual property without interfering with or even violating not just people’s bodies but also their properly acquired property (as their personal computers or libraries)? Private sphere of the individual is not only praiseworthy for human development; its main role is to maintain a space free of political interference (Breakey 2010, 233–4).

On the whole, IPRs often open doors to stifling self-property rights and rights derived from them.

(5) IPRs are here to promote creativity. However, is creativity a more important value than welfare or general well-being? When left-libertarians introduce the thesis of world-ownership their idea is to secure a common ground for consistent property rights whose role is to enable equality. Starting from these dual original rights, a person can achieve not only the best compatible amount of freedoms, but this way, it is also guaranteed that her rights are not run-over by their enforceable duties towards others. Keeping the common pool of ideas and expressions full is the best way to secure effective opportunity in understanding the world. The scope of IPRs should be reduced such as to prioritize access to information and knowledge. The inflation of IPRs in the last two decades – seen as an answer to the huge possibilities of digital networks and global markets to transfer without consent informational content – and the continuous tendency to expand their limit in time constitutes a threat to non-right holders to fulfill their opportunities. Patents for biotechnologies and crucial drugs, copyright for fundamental knowledge a person, group of persons or nation need in safeguarding their existence, rights that limit use of intellectual content in schools and libraries, etc. are unjust constraints on people. A new institutional arrangement should be consistent with the world-ownership thesis and could provide – either through compensations or through limiting copyright and patent holders in their rights – the equal opportunity for well-being of all

human or non-human persons at no loss of intellectual recognition or incentives for creativity.

(6) What differentiates left-libertarianism from other liberal-egalitarian conceptions is its perseverance in showing that property entitlements should be *limited in time*, i.e. just for the right-holder lifetime, and also that duties are *borderless*, they are not restricted to a specific territory. A way to interpret the Lockean proviso is that the members of every generation should “ensure that, at their deaths, resources that are at least as valuable as those they have acquired lapse back into a state of nonownership so that the next generation has opportunities to acquire unowned resources which are at least as valuable as theirs” (Vallentyne, Steiner, and Otsuka 2005, 214). Even if “dead and future persons have no rights” (Steiner 1994, 250), this position entails a moral duty to future generations which is not correlative to any right, but it is as a result of the world-ownership thesis. It does not matter how we conceive future generations (Otsuka 1998), the fact that dead persons do not have any right to transfer owned objects purely because they ceased to be self-owners therefore their possessions fall back in a non-owned state is important. If this consequence of self-ownership thesis is right and if world-ownership involves any valuable unowned resource then copyright must not survive her owner. Nowadays copyright terms encompass creator’s lifetime and another 70 years. It can be inherited, hence any generation, after the author’s death, is deprived of valuable resources. The case is more despicable when it comes to orphan works – artistic and scientific works whose author cannot be found, but the copyright persists.

Left-libertarians are not interested in redistributing the fruits of social cooperation, like the Rawlsians (Vallentyne, Steiner, and Otsuka 2005, 214). For them, natural resources are not confined to a territory because “national boundaries are morally arbitrary” (Vallentyne 2000, 12). All human agents are entitled to them. In the case of ideal objects, an evolutionary account of knowledge must accept the continuous circulation of expression and ideas and historically cultural interbreeding at any specific moment in time. Globalization is in the first place an endless transfer of ideas which started before the Roman Empire and gained momentum in the last century. A patent for medicine or a copyright for a scientific handbook does not cover only a specific territory, but the world as a whole. It does impose duties to all world citizens. If its impact on the well-being of each citizen is measurable – and it is – and if its effect worsens their opportunities and prospects than the actual institutional arrangement should be redesigned in order to compensate or to share access for those adversely affected.

Conclusions

In the sections above I tried to construe the left-libertarian framework in order to deal with contemporary issues of intellectual property. At origin, John Locke and contemporary left-libertarians as well, were having in mind only the case of

physical objects, but I believe I have offered reliable arguments for an extension of this way of thought to ideal objects. The global regime of IPRs is under substantial scrutiny from different angles. What I proposed is to start from natural rights to observe how IPRs foundation, justification and moral implications could be assessed in a world where positive entitlements are settled by a top-down institutional design. Left-libertarianism is a theory of justice, not a legal theory. Moral rights and duties involving persons and their actions act as philosophical tests or checks, not as outputs of my analysis. The focus was on original rights in the interest of sensibly exploring how derived (and frequently imposed as) positive rights could and sometimes do create injustice. The flow of information, ideas, and expressions is harder to control than to motivate its free streaming. Moreover, and perhaps this is a fault in my position, I did not try to see what motivates creators to provide strenuous intellectual labor. But I think I provided sufficient reasons for the necessity of pursuing knowledge by each and every person alive.

IPRs are not original rights, they are derived and therefore any claim for intellectual property is *weaker* than the correlative duties attached to self-ownership and world-ownership rights. In other words, IPRs *lack priority* in front of these two original rights. IPRs should be overridden by and should not prevail against stronger claims of justice. An implication of their weakness is that they should expire faster than physical property rights. Another implication is that, as derived rights, IPRs *should not benefit of strong enforcement* like any original rights especially if it could be in the latter's detriment. Ideal objects revolve around general ideas and specific expressions and furthermore they radiate from mind to mind and body to body. Strong control rights or rights to compensation for intellectual property could be indeed enforced only at the expenses of diminishing other rights. This tensions should not be underestimated.

IPRs inflation is a hazardous process which corrodes piece by piece both self-ownership and world-ownership. It is also morally wrong because it harms people who did not consent; furthermore, this proliferation could also have unexpected social results, due to new layers of restrictions, such as the sinking of intellectual opportunities for people, an impaired access to education and culture, and a lesser level of innovation especially in the most deprived parts of the world. It is hard to estimate to what extent IPRs are really exercisable. For Steiner (1994, 57) at least, any acknowledgeable right must be exercisable because exercisability is found in the essential nature of right, not as contingency. Are IPRs more 'virtual' than 'actual?' At a first sight – take a look at the widespread contemporary illegal file sharing or at the counterfeiting phenomenon on the black market –, the balance tilts to a general failure of enforcing IPRs. An author could not in fact control her work in relationship with people's minds, intentions, and actions.

If IPRs upset the equality of opportunity or the equal share of raw intellectual resources, then the demand for *redress*, in the light of left-libertarian view of justice, are justified. A “redress transfer” is corrective, not retributive; it corrects only when a right is trespassed and it does this in order to restore the “just distribution” (Steiner 1994, 266–7). How to make this redress is a practical question and it must be addressed within the institutional design. Left-libertarians propose a “social fund” and/or mechanisms to re-introduce in the “common pool” of resources which through abandonment or death become unowned (Steiner 1994, 268). In the copyright case, “orphan works” and any other work after the author’s death should enter the public domain. In the case of patents, any unexploited invention, process or design should be free to use, in a reasonable period of time but smaller than 20 years. The future tends to become automatized, thus it will involve less and less manual labor. The disappearance of blue-collar labor due to robots opens the question of how persons will make a living without access to intellectual objects; these kinds of resources will exceed the utility of natural resources if they haven’t already. The distinction Hannah Arendt made between labor and work seems increasingly present and true.

The last conclusion is radical and it has to be taken *cum grano salis*: intellectual property is a category mistake. As I tried to argue elsewhere (Vică 2010), it is flawed to assign IPRs ontological features similar to physical property rights. They seem to look more like political privileges and economic artificial monopolies and that is why they generate many conflicts. Under the mistaken umbrella of intellectual property many claims were accepted as real property entitlements. The result is an unjust global regime of IPRs. It is not philosophers’ trade to make redress happen, but it is our duty to prove its necessity.⁷

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Inquiries in Political Theory

From Moral Responsibility to Legal Responsibility in the Conduct of War*

Lavinia Andreea Bejan

Abstract: Different societies came to consider certain behaviors as morally wrong, and, in time, due to a more or less general practice, those behaviors have also become legally prohibited. While, nowadays, the existence of legal responsibility of states and individuals for certain reprehensible acts committed during an armed conflict, international or non-international, is hard to be disputed, an inquiry into the manner in which the behavior of the belligerents has come to be considered reveals long discussions in the field of morals and theory of morality, and, especially, regarding the different manner of establishing the elements to whom obedience is rather owed (the divinity, the sovereign, the law) and the relations between these. Hence, the present paper aims at analyzing the connections between moral responsibility and legal responsibility for wrongful behaviour during war in a diachronic approach, along with the major shifts in paradigm (codification and individual liability). Understanding morality as practice, convention, custom, we are arguing that the nowadays requirement of liability for war crimes appeared due to an assumed intention and practice of the decision-making entities (the sovereign, the state) and, ultimately, to a decision-making process of the most influential states.

Keywords: moral responsibility, custom, ethics of war, individual liability, war crimes

Introduction

Although, starting with World War II, peace became a quite serious goal in international relations, as proven by the rather small number of armed conflicts and war victims (correlated, of course, with both the existing military technology and the formation and respect for the customs regarding the protection of individuals), the history of humanity experienced the coexistence of war and peace, which raised both the issue of the justness of war, and the issue of the just behaviors adopted by the belligerents during combat.

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Nowadays, the term 'war' itself seems rather obsolete, legally speaking, since war is outlawed, and declaring war is strictly prohibited according to international law. However, since, factually speaking, state of war still appears, the term used in the contemporary period is the one of 'armed conflict,' which can be both international and non-international (involving insurgent movements, rebels, paramilitary forces and so on), and even justified by democratic reasons.

As a matter of fact, theoretical justifications for waging war have been brought into discussion ever since Antiquity, and we are considering the just war theory, preoccupied, on one hand, with the morality of starting and waging war, and, on the other, with the moral behavior during war, as well as, more recently, with the issue of liability for the contrary behaviors. A distinction is made, accordingly, between *jus ad bellum*, *jus in bello* and the more recent *jus post bellum*, gradually emerged through customs. Customs, for their part, reveal the conventional character of morality, in the sense that morality, at base, is merely custom, convention, the practice in a given context or space (Harris 2009, 37). Different societies have come to consider certain behaviors as *morally wrong*, and, in time, with the support of a general practice, those behaviors have also become *legally prohibited*.

James Turner Johnson speaks rather of a 'just war tradition' than a 'just war theory,' emphasizing the fact that 'just war theory' is merely the general name for the tradition that has come to justify and limit war. The term 'just war theory' is imprecise, ambiguous, and this due to the variety of contexts in which the idea of just war appeared in time, due to the metamorphosis of the concept in time, due to the existence in the same (any) time of numerous theories, due to the imprecision of language (especially in what concerns the equivalence of terms between languages), and also due to the expectations that individuals have nowadays regarding war, expectations that are transferred to the idea of just war (Johnson 1981, XXI-XXII).

The just war tradition is rightfully seen as 'the coalescence of the major effort Western culture has made to regulate and restrain violence,' efforts that, nevertheless, can be found in any culture, although in different forms, different measures, more or less coherent. In what concerns the cultural attempts of regulating war and their sources, it is clear that, in Ancient cultures, a distinction between law and morality or religion is generally impossible, in Pre-modern cultures this distinction is also not easily accomplished (Johnson 1981, 41), while, with modern international law, the claims for some values that transcend cultures have become legal claims (Wright 1964, 155-156). Such claims beyond cultural borders made by Ancient civilizations were 'international' only in the sense that they were perceived by a certain civilization as adequate for the entire humanity, regardless of the distinct opinions that other civilizations might have had. Moreover, when conquest spread the hegemony of a certain culture, its moral or religious claims were spreading as well, becoming mandatory on the

subjected peoples due to the occupation accomplished by the new masters. Even in the Western doctrine of just war, a distinction between the religious, moral, philosophical or legal components doesn't lead to a fair assessment of the nature of this doctrine or the different value-forming sources that contributed to it (Johnson 1981, 41-42).

In the present discussion, just war tradition interests only insofar as it proposed the observance of a moral behavior during the course of a conflict and it is thought to have advanced the idea of liability for breaches of such a conduct. Whether war is moral or not, or what are the potential just causes for war are not relevant issues for the purpose of this discussion. We are considering the factual situation of the existence of an armed conflict (regardless of whether it is national or international) and the foundations of the idea of ethical behavior towards the enemy, as well as the manner in which this idea was transposed in the sphere of legal norms, customary or conventional.

A Diachronic Approach

'Normative attitudes' regarding what is and is not permitted during war are specific to each culture and time (Rengger 2008, 33). It seems that the Egyptians, the Babylonians, the Assyrians and the Hittites recognized certain restraints in waging war, and limits regarding combat are also mentioned in the Old Testament (Bederman 2001, 242-262), although, as is the case of all the rules grounded on religion in that time, the form of sanction seems to have been 'rather divine than earthly' (Cryer 2005, 11). In Ancient China, around the 5th Century B.C., certain thinkers who related to Confucianism seem to have spoken in terms of 'criminality' regarding unjust wars, although none of them seem to have had in mind the legal concept of 'crime' in the criminal law sense (Iriye 1967, 8-11). Also, while Sun Tzu, in 'The Art of War,' recommended the humane treatment of the sick, wounded, prisoners and civilians, and also respect for the religious institutions located in the occupied territories (Sun Tzu, transl. 1971), these recommendations were motivated rather by political realism than humanitarian considerations (Bassiouni 2013, 30). A century later, in India, The Book of Manu contained similar provisions (Singh 1984), and in Mahabharata it is said that those who breach the law of war will be considered outlaws and stripped of their privileges (Sastry 1966, 502).

The law of war in Ancient Greece was very harsh, since everything was allowed against the enemy. However, in time, certain rules for ameliorating the hardness of war, or at least for introducing some sort of discipline during it, like the necessity of a formal declaration regarding the state of war, the respect for enemy envoys or heralds, the neutral character of sanctuaries and properties belonging to gods, the protection of those who seek refuge (a right to asylum), have gradually led to a humanization of war. All of these seem applicable only among the Greek *polis*, due to a feeling of belonging to a well differentiated ethnic, linguistic, religious or cultural community, while the *barbarian*, the *non-*

Greek, with an unintelligible language, in relation to whom the Greeks considered themselves superior, could be subdued or held into slavery (Truyol y Serra 1995, 12). Therefore, the practice of war in Ancient Greece was bound to a series of conventions which were generally respected, and the breach of which brought real opprobrium, or even the head of the guilty. The release of prisoners, the possibility to bury the ones who fell on the battlefield, the respect for certain truces (for instance, during the Olympic Games), all these were conventions which had the effectiveness of law, and their breach was of utmost gravity, as Thucydides shows in his considerations on the Peloponnesian War (Thucydides, trans. 1989, referred to in Rengger 2008, 33). Xenophon, regarding the same conflict, speaks even of a possible trial in applying these ideas. The Athenian prisoners of war, captured by the Spartan commander Lysander, have been accused of planning and committing different breaches of the Greek laws of war, such as cutting the hands of the Spartan prisoners and throwing these prisoners in the sea. It appears that Lysander gathered his allies against the Athenians and they jointly decided that all Athenian prisoners are to be executed, with a single exception (McCormack 1997, 33). In *The Republic*, Plato even proposed a program of humanizing war among the Greek *polis* (Truyol y Serra 1995, 13).

The Greek Antiquity also represents the origin of the idea of natural law, along with Roman Antiquity. The Greek thinking was impregnated with the sacred character of laws, with roots in the oldest traditions and nimbed by different religious beliefs. Heraclites, Sophocles, Aristotle distinguished between natural law and written law, between a natural justice and a legal one (Craiovan 2010, 239), and equity was meant to “correct the law, where the law proves to be insufficient, due to its universality” (Aristotle, transl. 1998, V, 10, 6). In the same time, Aristotle clearly distinguished between a law that emerges from the nature of things and a law founded on human will, as well as between a common law of all humans and a law belonging to each state (Aristotle, transl. 1998, V, 11, 34). In the Hellenistic period, however, stoicism affirmed the unity of humankind, allowing for the enunciation of a set of ethical and legal principles that apply to all humans, without distinction of race, language or culture, a universal law (the *Logos*) regulating the life of cosmos, and all humans participating in it through their just reason (Truyol y Serra 1995, 14).

The Romans, on the other hand, while having complex conventions regarding war, the whole process of starting it being strongly formalized, had quite few restraints regarding conduct on the battlefield once war itself was declared legitimate - some medieval thinkers even invented a type of war, *bellum Romanum*, a war without limits or restraints (Rengger 2008, 33). However, the Romans introduced the concept of *jus gentium*, which brings about an interesting discussion regarding law and universality. The existence, in Rome, of a college of praetors with attributions in starting a war, concluding a peace or requesting compensations for injuries caused in Rome to a Roman citizen gave birth to *fecial law*, a sacred law, but which came to acquire a rather formal character. In order

to cover the legal vacuum in what concerned foreigners, when a treaty with their city would not ensure their explicit protection (in the absence of such a treaty, the foreigner had no rights, the Roman *jus civile* being inapplicable to him), *jus gentium* developed, to the detriment of *jus civile*. *Jus gentium* had a larger flexibility, due to the wider freedom of the peregrine praetor (as opposed to the formalism of *jus civile*) in developing its norms, taking into account the needs of the everyday practice. The very character of these needs, common to the members of the different peoples the commercial activities of which were in contact with Rome, as well as the role played, in the activity of the praetor, by the considerations of 'natural equity,' were tending towards a universality of its norms, aided by the influence of stoic philosophy, widely disseminated in Rome, and due to which *jus gentium* came to represent a sort of law common to the ensemble of peoples – which some of them were even confusing with the natural law of Greek origins (Truyol y Serra 1995, 15-16).

This gradual change of the original significance of *jus gentium*, under the influence of Aristotle, and of the stoics as well, is obvious at Gaius, who distinguishes between a law that is specific to humans (civil law) and a law that is common to all humans, established by the natural reason among all humans, and that all peoples apply. Called *jus gentium*, this law has a triple quality: it is common to mankind, it is unwritten and it is natural (Gaius, *Institutes*, I.1, referred to in Gaurier 2014, 16-17), continuing the tendency advanced by Cicero, of a law that extracts its validity from a superior necessity (Cicero, *De Officiis*, 3, 15, 69, in Gaurier 2014, 17) - certain eternal, immutable laws, 'equity,' considered above positive laws, were opposing injustice and tyranny (Craiovan 2010, 239). Ulpian, as well, states that *jus gentium* is the law practiced by human peoples.

The tradition of natural law is continued in the European Christian medieval thinking, in which divine punishment has a strong role. Augustine, for instance, distinguishes between eternal law, representing the very will of God, and natural law, a sort of imprinting of eternal law in our being; positive laws must derive from natural laws, and their destination is to protect the peace and social order established by God - if positive laws do not derive from natural law, their observance is not mandatory (Craiovan 2010, 185). Thomas Aquinas draws the same distinction between divine laws, which are to be found in God's wisdom, the laws of nature, which result from the divine ones, and positive laws, in which human arbitrary intervenes, and which are only right if they correspond to natural law (Villey 1957, 237). The Christian perspective highly influenced the manner in which the moral character of war (and, subsequently at the time, the moral behavior on the battlefield) was assessed - if war was just, limitations were to be taken into consideration in its conduct.

Thus, Augustine claims that war is only justified if it is the only manner of repairing a wrongdoing that its author doesn't itself repair, and necessity, the only one that makes war just, imposes, in the same time, limits in waging it

(Truyol y Serra 1995, 25). Of course, the justness of war is obvious when it represents the will of God, when God himself calls people to battle; but, in the lack of such a divine command, when wars are undertaken without express warrant from God, but with just causes, more caution must be taken as reason, aided by charity, attempts to discover whether the conditions are all met, and, also, to what degree. Although the Christian considers his participation in war to be just, he can never act as if his endeavor is absolutely right, and his own power of discerning regarding the fairness of his endeavor doesn't allow him to use unlimited violence towards the enemy (Johnson 1981, XXIX-XXXI). According to Thomas Aquinas, punishing wrongdoers in the name of God could also represent a just cause for war (Johnson 1981, XXIX-XXXI). In parallel, the doctrine of pacifism has developed, as opposed to the idea that Christians could participate in acts of violence such as war, some authors even claiming a tripartite characterization of the Christian attitudes regarding war: pacifism, just war and the holy war, the crusade (Bainton 1960, 148); the spectrum seems to go from those who reject any participation in violence to those who accept war without restraints in the case of true religion (Johnson 1981, XXV).

Starting from the justification of war in the Augustinian sense, two issues divided thinkers: what is the competent authority for resorting to a just war, and which of the conditions of just war are also applicable to the wars against non-Christians. In what concerns the first issue, the answer differs according to the approach of the principle of hierarchical power in the Christian world. The supporters of the Pope's plenitude of power considered war a monopoly of the papacy (Henri de Suse, the 'curialists'), while the theoreticians of the Empire were attributing it exclusively to the Emperor (Barthole, Balde); a third position was recognizing sufficient authority to the communities that didn't have, in fact, a superior, the 'princes' in general (Innocent IV, Thomas Aquinas). In what concerns the issue of non-Christians, those who were subordinating natural law to the positive divine law (the positive law of divine origin) were refusing legal personality to non-Christians, while those who were operating a clear distinction between the natural and the temporal field on one side, and the supernatural and the spiritual on the other, could not agree to such discrimination towards non-Christians, attributing them a legitimate power and jurisdiction, and including them, accordingly, in the 'human society' (Truyol y Serra 1995, 26-27). The relevance of this matter is that the war waged between sovereigns was to respect certain conditions (Truyol y Serra 1995, 21), and sovereigns could be, therefore, either the Pope, or the Emperor, or, according to the third position, any *princeps*. If the non-Christians were not granted legal personality, the conditions – the limitations available to war between sovereigns – did not have to be applied.

In parallel, the medieval Christian authors also contributed to the study or systematization of the law of war, as well as the conduct during hostilities, which had to fit the 'humanitarian spirit' that had inspired 'God's peace' (Truyol y Serra

1995, 26). The practice of the Church somehow ratified precaution regarding the participation of Christians in war, demanding that, after war was over, the soldiers were to make penitence for the sins they may have committed during hostilities (Johnson 1981, XXX); hence, the Christian world was accepting the religious connection with punishment for breaches of the limitations in the conduct of war, books and decrees of penitence being known, such as the Penitential of Theodore, Bishop of Canterbury (7th century B.C.) or the penitential decrees following the battles of Soissons, in 923 (Draper 1998 I, 20-23) or Hastings, in 1066 (Draper 1998 II, 26).

In fact, in most of the Christian space, the division of power between the Emperor and the Pope, the two supreme institutions, made the whole spiritual authority belong to the religious leader, and it manifested upon all Christians, regardless of the jurisdiction they belonged to. Canonic law became, thus, a 'supranational' law, along with Roman law, converted into *jus commune*, one of the essential elements of the Christian West. During the 12th to 15th century also developed a *jus gentium* of religious origin, in which the ideal of chivalry, through its code of honor, that was imposing certain forms and limits of battle, was channeling the military activity (Truyol y Serra 1995, 20-21). Thus, heraldic courts developed a code of chivalry that was regulating the conduct of a knight in battle, and the Christian princes were applying these norms in their courts (Maogoto 2009, 4). For instance, in 1474 an ad hoc tribunal was established, composed of 28 judges from different states allied to the Western Roman Empire, which subjected to trial and convicted Peter von Hagenbach for murder, rape, perjury and other crimes committed in breach of 'the laws of God and men,' during the occupation of the city of Breisach, in a time when there were no hostilities (Schwarzenberger 1968, 462-466).

The decline of the Western Roman Empire and the beginnings of modern state crystallization (along with the numerous and bloody conflicts associated) seem to have determined a certain change in the approach of the belligerents' behavior, the thinkers seeking to systematize more and more the laws of war, and suggesting, as well, forms of accountability that were exceeding the religious paradigm.

Thus, Franciscus de Vitoria used the idea of natural law in order to shape his vision on the norms applicable to the conduct of hostilities, especially in the context of the interactions between the Spanish and the Native Americans, in the hope for determining the former to not use without restraints their superior military power against the latter (Johnson 1981, 77). Moreover, in his opinion, "difference of religion does not represent cause for just war," but the only such justification is the harm suffered, and the only way to identify whether a war is just or not is through natural law, common to both Christians and non-Christians – assessing, in the same time, that the use of force by the Spanish Crown against the inhabitants of the newly-found realms is not justified (Rengger 2008, 37). Suarez, without departing from the just war theory, stated, for its part, that "the

method of waging war must be adequate” (Suarez, referred to in May 2008, 60). Ayala illustrated the implications that the just war theory and the concepts of state sovereignty have on the evolution of the norms regarding the non-international armed conflicts (Perna 2006, 15-16), stating that a war against rebels was as just as possible, as long as the rebels were committing an offence against God, from whom power was deriving, and that is why the laws of war shouldn't apply to the acts of rebels (Ayala 1582/1912, 16). Alberico Gentili suggests, for a change, that the right of belligerents to prisoners and war booty does not depend on the justness of war, and states that the law must be impartial towards both of them (the captured property becoming the property of each side), considering that war can be just on both sides (Gentili 1598/1933, 33).

Grotius brings into discussion the idea of punishment beyond the regular punishments that commanders could impose on the members of their troops, recognized (and recommended) at least since Sun Tzu (Sun Tzu, transl. 1971). In Grotius' view, grounded on natural law, four fundamental precepts direct the entire law, and one of them is the equitable punishment of those who breach them (*poene inter homines meritum*). Analyzing the right of society to punish those who breach its laws, prejudicing the conditions of living in common, Grotius claims that this right should not be arbitrary, like revenge, but it should be a manifestation of reason, exercised within the limits of justice and humanity (Negulescu 1986, 530-531). This idea also manifested in what concerned a possible form of criminal justice for the conduct during war; in the statement “in order to justify a punishment of that kind (killing a war prisoner), the person put to death must have committed a crime, and such a crime too, as every equitable judge would deem worthy of death” (Grotius 1625/1901, 359-360), Grotius refers to punishment in the criminal law sense, and not to declaring war against the wrongdoers. The writings of Vitoria, Suarez, Ayala, Gentili, Grotius, Puffendorf, de Vattel produced historical syntheses between what the Romans called *jus ad bellum* and *jus in bello*, and they were combining the values of natural law in the line of Plato and Aristotle with the Christian equivalents from the writings of Augustine and Thomas Aquinas (Bassiouni 2013, 31-32). Grotius' ideas represented a bridge between the laws of war specific to medieval Europe and a new, pre-Enlightenment insistence on a more civilized approach regarding the highly destructive wars, reflecting, in the same time, the increasing preoccupation of the thinkers in early modern age for the nature of war, its justifications, and war crimes (Crowe 2014, 34).

This preoccupation started to be manifested, in the same time, in the area of the imposition by the state of some sanctions for the individuals that were committing breaches of the rules, for instance through the adoption of military codes or of ordinances establishing punishments. Mainly, these were targeting matters related to military discipline (desertion, for instance, has been punishable since immemorial times, but it was the commander who had the responsibility of imposing a possible sanction); however, certain norms of

conduct related to the behavior on the battlefield, punishable in a 'systematic' manner, by the state (such as theft or rape committed by the members of the military) also emerged.

It is difficult to speak of an universal idea of protecting the weak (wounded, sick and so on) in the field of conducting armed conflicts; at least until this time, the main reason for granting some form of protection was either the interest of a particular army (military discipline) or a form of revenge (when the winner, at the end of a conflict, would subject the captured prisoners of war to trials for breaching the laws of war). Even assuming that the enemy was recognized his *humanity* (in the European space, even Christian, if he *resembled* the European, if he had similar behaviors and values, if he wasn't 'barbarian,' if he knew the same *natural law*), and although, in general, the soldier *ought to behave civilized* (in the sense of the Christian-European chivalry, of honor, of nobility), the military reasons and necessities seemed and could scatter any moral norm in the treatment of the *enemy*.

The Major Shift in Intentions: Codification

Until the nineteenth century, the remains of chivalry, the theoretical treaties without legal force and the slow increase in restrictions provided by the customary law derived from the practice of states equaled to the legal framework governing conduct during war. However, the changing nature of warfare, driven by technological progress and the increased rivalries between the newly-consolidated nation-states, revealed the lack of force specific to these restraints and imposed their revision (Maogoto 2004, 21). Thus, the second half of the nineteenth century marks the beginning of a tendency towards codification, concentrated on the law governing certain limited matters, regarding, for instance, wounded soldiers, or the prohibition of certain weapons, and the transition to the twentieth century brings a more comprehensive shaping of the modern law of war and war crimes (Meron 2011, 79). As the modern international system developed in the nineteenth century, and multilateralism found its voice, efforts started to be made for increasing the level of voluntary compliance with certain international obligations (Maogoto 2004, 21).

In fact, the essential paradigm shift in thinking a system of protecting individuals during wars depended on the modifications in international relations and military technology that took place around mid-nineteenth century. The collapse of Metternich's system in the eve of the Crimean War caused almost two decades of conflict – the war of Piedmont and France against Austria (1859), the war for Schleswig-Holstein (1864), the Austro-Prussian war (1866) and the French-Prussian War (1870) (Kissinger 2003, 88). If the horrors of the Crimean War underlined the necessity of some norms that protect the wounded and those who care for them (Pugliese 2002, 316), the conflict between Piedmont and France on one side, and Austria on the other, directly led to the adoption of the

first humanitarian convention with general applicability, the 1864 Geneva Convention.

In 1859, the Swiss banker Henry Dunant travelled to Northern Italy, where he witnessed the human losses caused by the Battle of Solferino (Reinalda 2009, 52), carried between the French and the Austrian troops on June 24, in Southern lake Garda, a battle which ended a two-months campaign, marked by the first large-scale use of railways in war, as well as the first deployment on the battlefield of rifled field artillery. The battle involved over a quarter of a million individuals, 26000 persons being killed or wounded on June 24 (Brooks 2009, 4). Dunant noticed that there were barely any doctors or supplies at the disposal of the thousands of wounded, hence he joined the relief efforts, writing to his friends to ask for support and composing an appeal against the cruelties he assisted (Reinalda 2009, 52), in the style of the purest and so effective German Romanticism.

Therefore, in 1862 Dunant published (and distributed through his own financial effort) the book *Un souvenir de Solferino*, in which he described in detail the sufferings endured by the wounded and argued for the establishment of some relief societies that would protect the victims of war (Boissier 1985, 56). The paper drew considerable attention, both due to his proposals regarding the avoidance of such situations, and due to the general feeling that the time of peace Europe experienced was coming to an end, and technology would increase the damages caused by more and more effective weapons (faster firearms, more destructive bullets). Dunant's proposal was promoting the establishment of some national societies that would work for a better medical supply for the wounded and would take over responsibility in times of war, with the help of qualified volunteers. While Dunant was making every effort to convince the governments, using an appeal to reason, the Swiss philanthropist Gustav Moynier, who was familiar with the work carried out within international conferences, sought to obtain enough support in favor of an international convention that would establish the basic rules for the protection of the wounded (Reinalda 2009, 53); the efforts of the two led to the adoption of the first convention of a purely humanitarian character, the 1864 Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, the starting point in the codification of the rules of behavior on the battlefield, initially signed by 12 states, but to which, in time, almost all 'civilized' states adhered to (Oppenheim 1905/2008, 707), namely 45 more.

The Major Shift in Enforcement: Towards Individual Liability

When the ample process of codification of the laws and customs of war began, the intention of its proponents and participants was to convince states to apply certain norms in a uniform manner, relying on the pressure of 'public opinion' (Maogoto 2009, 5), which would have determined the leaders to adopt or to

impose on their troops a certain – moral – behavior on the battlefield. These norms did not have proper legal force, a specific enforcement mechanism, and they did not contain specific sanctions for the individuals breaching them; however, the signatories of the adopted conventions could resort either way to the ‘classical’ means of reacting to a wrongdoing caused by another state. But their primary goal was to convince states to apply them voluntarily - these norms were rather conceived in the ‘should’ manner, an ultimately moral sense. However, quite soon it seemed more appropriate that a system of sanctioning should be conceived, one that wouldn’t function in a ‘private’ manner, but an ‘international’, ‘systematic’ one, and that would transfer to the discussed moral norms a well-defined legal character, of proper obligations. Hence, ever since the 1870s, the idea of establishing an international court that would subject individuals to trial for breaches of the laws and customs of war appeared, an idea continuously developed through the explicit agreement of states ever since the end of World War I and accomplished in various instances (regardless of whether we are considering the temporary international tribunals, or the recently-established International Criminal Court).

In time, this idea obtained the obliteration of any (legal) relevance of the justness or lack of justness of a certain conflict in what concerns punishing individuals that breach ‘the assumed rules of the game’ (including, or especially, customary norms, the norms established by state practice, reminding of *jus gentium*, the *law of nations*, yet this time universally binding). The legal norms (both in sense of customs and rules contained in the accomplished codifications) regarding armed conflicts are preoccupied, as Anthony Lamb rightfully appreciates, rather with “the wrongfulness of doing certain things to certain people” (Lamb 2013, 16), in a sense that is rather prohibitive and of abstention than in a positive sense, of ‘action towards’.

The concepts of moral responsibility can and should undergird the legal concepts regarding criminal liability (Corlett 2013, 9). The theory of moral responsibility concentrates significantly and directly on the nature of the intentional and voluntary action of a moral agent and on the measure in which this determines the character of morally responsible agent. In general, a moral agent is seen as a morally responsible agent (who can be praised, rewarded, blamed, punished) to the extent that he is a voluntary agent (he can decide against acting in a certain manner). The concept of responsibility and the concept of punishment involve each other, the notion of punishment involving the character of responsible agent of the one that can be punished, therefore responsibility is at least a necessary condition for punishment (Corlett 2013, 9-10).

Transferring this matter in the field of criminal law (understood as the law that established which behaviors affect the entire society as a whole, as well as the applicable sanctions or measures), if the internal law of each state establishes the necessary conditions for criminal liability to be drawn, in what

concerns international criminal liability (in the sense of the present discussion, for war crimes), if a certain norm doesn't contain any reference to the subjective element, then the form of guilt provided in most legal systems for the underlying offence is required, and it seems that individual liability can be drawn even if the act was committed through culpable negligence (Cassese 2005, 438-439).

The morality of the existence of a form of accountability (regardless of what that form is) seems undeniable. In Michael Walzer's words, "attributing responsibility is the critical test of the argument for justice," since "there can be no justice in war if there aren't, ultimately, responsible men and women," and "law must provide some recourse when our deepest moral values are savagely attacked" (Walzer 2006, 287). Orend, distinguishing between just war theory and international law, claims that the former represents a set of morally mandated principles that guide our determinations on the ethics of conduct regarding war, while the latter refers to binding principles that derive from treaties, jurisprudence or customs, and which can be the subject, ideally speaking, to constraints imposed by law. Against Orend's assessment that just war theory represents the moral mark that offers convincing ethical principles that guide the construction of the legal principle (Orend 2007, 571-572), Kyriakakis fairly notices that, in what concerns war crimes trials, the relation is reversed, and the existing practice establishes the reference point for theory (Kyriakakis 2012, 128, n. 74).

Conclusions

As a matter of fact, the entire effort of codification regarding the rules of behavior during war represented a collective reaction (product of Western thought and with universalist claims actually 'accomplished') to the destructive methods and means of warfare that appeared along with the technologization and industrialization of war in the modern sense, and also a *humanitarian* effort. These rules represented (and still represent) the expression of the practice of participants in armed conflicts, or of their intentions, motivated, in time, by different reasons, different 'morals,' and to whom all recognized states of the world have acquiesced – if not for purely humanistic grounds, at least for the sake of reciprocity (the 1949 Geneva Conventions are ratified by all these states). In what concerns ensuring some forms of international criminal justice for war crimes, and for other grave crimes such as genocide, crimes against humanity or the crime of aggression, these fully depend on the explicit agreement of states, through their participation in the specialized international mechanisms. All these rules of behavior are subjected to a continuous process of practice, as well as, equally important, of a permanent evaluation accomplished by the international courts. Although these rules can be modified and completed at any point, even given up, they reveal the current 'international morality.'

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Perennialism and Modernism in Romanian National-Communism. An Ideological Dilemma?*

Emanuel Ciocianu-Copilaș

Abstract: This article analyzes the theories of nationalism incorporated into the national-communist discourse active in Romania between 1965 and 1969. Although insisting upon its Marxist ideological core, Romanian national-communist discourse did not, however, embrace the Marxist vision upon nations and nationalism, namely modernism. Furthermore, its vision in this regard, primordialist perennialism, was typical of right-wing, even extreme right-wing ideologies. How was that possible is the main question of the following pages.

Keywords: Dacians, unity, continuity, national-communism, primordialism

Introduction

During Gheorghiu Dej's leadership, especially after 1960 and after the shy, yet undeniable separation from Moscow, the nationalist elements gradually appearing within the ideology of the Romanian communist regime indicated perennialist preferences, an intriguing evolution for a discourse pretending to be Marxist in its essence. Perennialism is a theory of nation which insists upon the symbolic and, to a certain point, social continuity between antique ethnies, feudal peoples and modern nations. The modern, liberal and Marxist, theories of nation, embrace a totally different position: although they recognize, without much enthusiasm, a somehow pure symbolic continuity between ethnies/ethnies and nation, they quickly add that the last one is selective and partisan constructed and instrumented, with the aim of obtaining certain political benefits, and that the new economic and political elites brought forward by the industrial revolution have the interest to create, through administrative and educational means, a working force able to sustain the necessities of an internal market in the making. While liberals tackle the national problem by mainly political means, appraising the civic and participative benefits of modernity and

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arguing that, in the whole, the evolution from feudalism and absolutist monarchies to the industrial societies of consumerism and mediatic spectacle was a positive one, Marxists consider that the new political economy of capitalism already proved its limits, despite a progresist stage consisting in the dismantling of feudalism and absolutism, and argue in favor of abandoning it for a new mode of production in which the division of labor and thus social polarization would be absent (see Gellner 1993).

Coming back to the Romanian communist regime, if at the end of Gheorghiu Dej's leadership perennialism was present, in a moderate manner, in the party propaganda, the 'Golden Age' will witness the primordialist nature of Romanian national-communism. Unlike perennialism, primordialism is not satisfied with a fluctuant and insufficiently articulated, at a discursive level, historical continuity, although a 'bimillennial' one; starting with the last millennia before our age, when Dacians were considered absolute masters of a territory twice the size of modern Romania and located in the north of the Danube river, going through the 'Dacian state' created by king Burebista in the first century of our age, through the Roman conquest and the 'ethnogenesis' process, through the voivodates of medieval vlachs, the period of Otoman suzerainty over the Romanian provinces and arriving to the 1859 union, the 1877 independence and the 1918 union – the whole historic discourse was rewritten to assess not only the historical continuity and the permanent ideal of 'unification,' but also the supremacy of the Dacians and of the Romanians, later, with reference to all other ethnies, peoples or nations which inhabited or continued to inhabit the territory of the Romanian Socialist Republic (RSR).

Romanticism, the Central Ideological Component of Romanian National-Communism

Just as in the case of German culture, by which it was massively inspired, Romanian modern culture embraced romanticism as its core set of values. From the second half of the XIXth century and to the interwar period, various types of nationalisms, inflamed by a dominant right-wing political culture, made use of the romantic myths and stereotypes that were perpetuated from generation to generation. With the partial exception of Dej's communist leadership, Ceaușescu's national-communism recuperated previous elements of romanticism and mixed them into a new ideological formula. The cult of heroes, of a mythical and heroic past, the cult of medieval hierarchies, the cult of an organic unity between the leader and the people, the need to affirm, both internally and externally, an assertive and ostentatious political identity (see Râmbu 2001) – all these elements were combined with the Leninist ideology to form an unique ideological mixture: Romanian national-communism.

Primordialist Perennialism and the Invention of Romanian Antique History

According to Mușat (1986, 8), Ceausescu believed that

Within the character of the Romanian people, in its inextinguishable yearning for freedom and independence one can find embodied the high virtues of ancestors: the resoluteness, pride and wisdom of Dacians and Romans, the heroism and fearlessness of Decebal and Traian.

The combination between Dacians, named by the ancient historian Herodotus 'the most fearless and rightful among the Thracians' – and the 'proud' Romans resulted in a superior synthesis, 'a new people based on the most esteemed virtues' both of the winners and also of the losers of the Dacian-Roman wars, the Romanians, characterized from immemorial times by their 'love of truth and justice.' The Romans supposedly left us their language, while from the Dacians we inherited 'the ownership of this land' and our 'thinking' (Anghel 1983, 26). The tasks of the party propaganda were therefore clear: "The Dacian-Roman origin and the continued existence on this land," the general secretary of the Romanian Communist Party (RCP) argued,

constitute fundamental characteristics of the Romanian people. The establishment in history of the place, the origins and the continuity within the Carpathian-Danubian basin of the Romanian people constitutes the fundament of every ideological, theoretical, and politically educative action. One cannot talk about socialist patriotic education without knowing and honoring the past, the work and struggle of our ancestors (Preda and Pătroi 1986, 324).

If during Gheorghiu Dej's period the Dacian-Roman filiation and the 'bimillennial' continuity of their descendants on the territories of Moldavia, Wallachia and Transilvania was rarely mentioned, the 'Golden Age' will transform it into one of its cornerstones, amplifying it in a 'Dacian' sense. Latinism and Dacism represented two major interpretations of the origins and of the identity of Romanians, both coming into shape during the XIXth century – within a promising political context. The Latinism of the Transilvanian School was centered on the idea of total identification of the Romanians with the West, these being the descendants of the Roman colonizers which populated Dacia after the presumptive decimation and enslavement of the autochthonous population, following the wars against Rome, which they have lost; therefore, Romanian identity would have not contained anything 'eastern,' oriental, being, despite historical vicissitudes, of the migrations that gradually placed Romanians at the periphery of Europe – purely western. The Latinist discourse corresponded with the aim of obtaining political independence. Once this realized in 1859, the Dacist discourse will progressively affirm itself, through the writings of philologists and historians like Bogdan Petriceicu Hașdeu or Vasile Pârvan. Dacism meant the consolidation of the new found independence, sustained resistance against centuries of external colonization or at least absence of an adequate political organization and the assertive affirmation of the

new political status to which the contribution of European powers, widely recognized until 1859, was entering into oblivion (Verdery 1991).

From obvious reasons, the national-communist discourse opted for the 'dacist' version regarding the origins of the Romanians. It was much more fitted for the independence aspirations of RSR with reference to the imperial capitalist powers or with the Soviet 'hegemonism' and for the arrogance and ostentatious pride with which Romanian national-communism discursively recuperated two millennia of history in order to present itself as a natural and unique continuity of them. This whole Dacian mythology reminded sociologist Henry Stahl of the legionary mentality: mystique, chauvinistic, excessive (Rostás 2000, 67). Presented as 'ancient inhabitants of this land' with reference to the Greeks with whom they developed intense commercial and cultural relations, the Dacians or the Gets were considered two of the most powerful tribes from the north of the river Danube, 'who have imposed their names to the other ones' (Daicoviciu 1968, 15). But Zoe Petre convincingly argues that even the Dacians or the Gets denomination forcibly overlaps a much more fragmented and dynamic identity, much more opened to the Greek space than the communist historiography presents (Petre 2004).

In the second half of the first century A. D., the Dacian civilization would have reached its peak. In support of the hypothesis of the 'high degree of civilization our ancestors have reached' are brought the constructions, the diverse skills and the progress of art. "Nowhere are to be found bigger settlements, more powerful cities, better tools, more beautiful works of art" (Daicoviciu 1968, 143). One could not find a better political legitimation for this miraculous civilization than the creation, between 60 and 48 B. C., by king Burebista, of a 'centralized Dacian state' which "expanded to the West and North-West until the middle Danube and Moravia, to the North until the wooded Carpathians, which bordered in the East the Tyrageis from the Dneestr river, encompassed Dobruja in its entirety and reached, towards South, until Haemus (the Balkans)" (Daicoviciu 1968, 107). The best proof supporting the (in)existence of this immense Dacian state resides in the fact that, after Burebista's assassination in the same year with that of his potential rival Caesar, 44 B. C., the first falling victim to the Dacian aristocracy unhappy with the threat of a centralization that would have substantially reduced its traditional powers and the last one loosing its life among one of the most important civil wars from ancient Rome – Burebista's political construction, "The great state which he had built with the sword but which lacked a true economic unity" (Daicoviciu 1968, 102) dismembered almost instantaneously. Despite this aspect which invalidates his hypothesis, any state, if one can talk about states in the politological sense of the term before our age – earns its name functioning on institutional, not on personal bases, and therefore surviving the passing of one leader or another: however, Daicoviciu insists that he does not talk about a simple and temporary, although huge Dacian 'tribal union;' moreover, "the development of the

production forces in the Orăștiei mountains (the military centre of the Dacian's political organization during the short and intermittent unification periods of the majority of their tribes by a leader more ambitious and more determined than his rivals, m.n.) and the complex of the cities built here by Burebista presupposes the existence, in the Dacian society from South-West Transylvania, of a precursory phase towards the construction of a state *before* Burebista" (Daicoviciu: 1968, 110; italics in orig.). Because Burebista was king, Daicoviciu further argues, his state could not be anything but an incipient form of monarchy, named, in order to maintain the Marxist cannon distorted through Leninist lens, an '*apprentice slave-state.*' Apprentice because slavery, although did not obtain a central role in the production process of Dacian political economy, represented nevertheless an element of innovation, progressist with reference to the anterior period of the 'primitive commune' which, 'according to the *objective laws* of history,' was destined to replace (Daicoviciu 1968, 118-119; italics in orig.).

Although in a flagrant discontinuity with the research methods used in the fields of history and political science, the syntagm 'centralized Dacian state,' sometimes completed with 'independent,' made, with the blessing of the 'genious of Carpathians,' an astonishing scientific career before 1989 (Ceașescu 1989, 18; Potra 1982, 10). On his turn, Burebista becomes, as his illustrious descendant over millenias, 'the artisan of a wise policy' rather than a warrior; the ones he led were equally brave and wise: "they cultivated as supreme moral values the pride of liberty, the bravery of defending it, moderation" and, flagrantly contradicting Daicoviciu's concept of 'apprentice slave state,' formulated in 1965 and already outdated with reference to the ideological intensification of national-communism, for which Dacians became the most democratic ancient people, beside the fact that it already was, as Herodotus mentioned, the 'bravest' and the most 'righteous' - "in an epoch of slavery, they rejected slavery." Externally, "Peaceful neighbors found in them reliable partners for economic and cultural exchanges, benefiting all; but the conquerors received from the Dacians the rebuff of a general took to arms and often had to learn the bitter, but deserved price of defeat" (Gheorghiu 1982, 292-293). Kind of what the Soviet Union would have experienced in the case of taking into account the possibility of repeating the Prague experience from 1968: it would have been confronted, as the Dacians did with the Romans, by a 'general' resistance, through what has been called 'the war of the entire people.' But the Soviet Union never had this intention. It did not matter anyway. What mattered is that the regime had the ambition to discursively overlap Burebista's 'unitary and independent centralized state,' representing a major danger for 'Roman imperialism' (read American and/or Soviet) through Dacia's capacity (RSR) to mobilize, 'through its example the fight for freedom of the peoples from the South of the Danube enslaved by Rome.' Thus to obtain, by indirectly competing with Maois and post-maoist China, the support of the nonaligned movement against a possible 'imperialist' or Soviet

aggression. The danger of a Soviet invasion, because an 'imperialist' invasion can be excluded from the start, was out of the question; however, it was used as a rhetorical weapon in the western press, where Moscow did not enjoy, in general, a favorable attitude.

Coming back to 'Burebista the founder,' as Corneliu Vadim Tudor names him, we find out that his unique aim was that of foreshadowing the continuation and the improvement of the political ideal of the Dacians by no one other than the general secretary of the RCP, "The supreme synthesis of the millennial wisdom of the Romanian people and of its youth without old age" (Vadim Tudor 1983, 81), legitimized by "the voivodal noblesse inherited from the hundreds of generations of ancestors" (Vadim Tudor 1983, 140). Therefore

the firm wall against migrations, the making of the first statal formations and afterwards, starting from 1290, of the Romanian countries – everything, absolutely everything springs from the common conscience of the borders and of the same ethnic being, conscience that was developed by that gigantic tarabostes that was Burebista. He really existed and offered the first viable measure of our being and permanence, no one can contest these evidences without making himself a fool in front of history. Romanian language, religion and the natural borders from *Burebista's* time constituted the sacred trinity of the national consciousness, the coagulating factors that held the Romanians together, two millennia, around their parental place, no matter how many winds would scatter the earth and the snow, the crops from the field and the ashes, against all sacrileges and barbarian plunders. Eternal praise to the father Burebista, and may his memory be adorned with bay laurels and green bay! *He was the first keeper of the golden tools of our ideals, under his wise leadership begun to shine on the heaven of our homeland the first stars of pride, to him the imperial eagles of the Carpathian and the whole nature swore obedience, to him gave praise the moiras of a great destiny for this people. He is the first great pillar of the Triumphal Arch of the country, while the second is, no doubt, Nicolae Ceaușescu. Between them, as a frontispiece, grows over ages and unites with the iron link of the 'lust that lusted' Michael the Brave. Through them, through these great men, and through the other brave makers of country and traditions, the Romanian people has come today to see with its own eyes its dreams of freedom, unity and prosperity!* (Vadim Tudor 1983, 64; italics in orig.).

The attention is retained, in this painting of cosmic proportions, by the 'natural borders' of the presupposed proto-Romania from Burebista's period, almost twice the size of the present day Romania. Nevertheless, the author does not hesitate in applying the accusation of irredentism, then and now, to the Transylvanian Magyars and to the Magyars leaving abroad Romania, through direct references to the 'loftily tribes' which "did not yet appear on the map of the world and still travelled blindly on the back of their horses, arousing the dust of the steps from sol-oriens" when "they, the Dacians, built in the crown of the Carpathians and on their valleys a classic culture, original and full of beauty" (Vadim Tudor 1983, 61).

Despite being the most 'brave,' 'righteous' and, one could add, the most democratic among the Tracians, the Dacians nevertheless lost the war 'with changing odds' (Gheorghiu 1982, 293) waged against Rome. It is certain that Dacians never stood a chance in defeating the greatest power of Antiquity. But when politics doubled by implacable ideological reasons penetrates not only the scientific field, but everything public and official, we should not be at all surprised when we read that, on the contrary, the power of the Dacians united by Burebista "became so great that at least two times existed the danger that they could occupy the Romans (and not otherwise, as it happened in 106 A. D.)" (Vadim Tudor 1983, 61). Remembering the two opportunities Burebista had to conquer Rome is purely superfluous. However, is not superfluous to mention that Traian waged against the dacians an 'aggressive, unjust' war, while the latter only defended their country, despite occasionally plunder campaigns in the Roman provinces from the South of the Danube. "The danger that the Dacian state represented for the Roman empire was real, but it did not threaten the existence of Rome and the Roman people, but only the Roman possessions at the South of the Danube" (Daicoviciu 1968, 250). Moreover, these campaigns would have not represented plunder opportunities, but tentative encouragements for the dacian tribes in the area to rebel against Roman occupation. Even if Decebal, the last Dacian king, would have conquered these regions during a war with Rome (something he never intended), "his action would not have been a war of aggression, but a war of freedom" (Daicoviciu 1968, 250) of the related and less fortunate tribes, without posing a threat to the existence of the Roman empire. "The expedition Traian prepared represented a mortal danger for the existence of the Dacian state, for the independence of the Dacian people. The Romans would fight in order to conquer, the Dacians for their freedom and their homes. In this sentiment of defending their motherland the Dacians have found the strength to heroically resist almost three years to the most formidable army Antiquity has ever known" (Daicoviciu 1968, 251). It intrigues, if something can intrigue further, the reciprocity the Dacians would have demanded from the Romans: we do not aim to annihilate you, so you should not aim to annihilate us. Ceaușescu's frustrations for not being the leader of a global superpower (Popescu 1993, 307), but of a small state lacking nuclear weapons are transposed in time, becoming the frustrations of a prosperous and independent Dacia against an immoral aggression from an empire its borders has continuously trespassed, even if pursuing some ideals too noble for the Roman comprehension capacity.

Just as 'Burebista the founder,' transformed by Vadim Tudor into the cornerstone of an absolutely ridiculous nationalist mythology (Vadim Tudor 1983, 81), Decebal becomes on his turn one of the antique predecessors of Ceaușescu. The Dacian king, named the 'hero of the ancestors' and the 'ancestor of heroes,' the 'Carpathian vulture' which presumably threatened Rome just as much as Hannibal did some centuries earlier – is considered a 'new man' for

'new times,' a hero whose sacrifice staked, just the remembrance of Burebista's 'Dacian centralized state,' the consciousness of Dacian-Roman continuity and of unity on the territory of modern Romania. "Centuries have passed, but they only increased the urge, the example of Decebal's deeds, strengthening consciousnesses in the struggle to maintain the ethnic being, to defend the liberty of the Land Decebal himself defended with ardor, with the sacrifice of his life" (Achim 1981, 77-89). And today, 'the sacrifice of the great king' is understood and valued more than ever, even the general secretary of the RCP himself proving his "deep understanding and cherishment of the lessons of the past" (Vadim Tudor 1977, 18) by inscribing the memory of the Dacian king "at a righteous place in the great book of the past" (Vadim Tudor 1977, 64).

Otherwise, it is obvious that the migratory populations which passed for almost a thousand years over the Roman Dacia's territory have radically altered the already plural identity of this former imperial province. One cannot talk, therefore, about a biological continuity between the Vlachs, the Moldavians and the Transylvanians from the medieval, modern and contemporary times – and Dacia's population after the Roman conquest, but only about a partial and selective symbolic continuity operated by certain political and cultural elites interested by the attention of a West whose development, prosperity and military capacities begun to affirm more and more and within which the memory of Rome's former glory was far from being extinguished. In Eric Hobsbawm's terms, a very important historian of nationalism, we are dealing with an 'invented' tradition, from purely pragmatic reasons: as an indispensable element within any type of discourse, history never exists beyond certain contemporary stakes, therefore beyond a form of politics. Medieval voivods needed the support of the Papacy and of the ascending Western powers in the attempt to stop or at least contain the Turkish expansion, Ceaușescu needed funds and western technology in order to finish the revolution in its national-communist acception and to transform the RSR into a global middle power.

Concluding Remarks

By transforming the Dacians into the direct ancestors of Romanians and into the symbolic embodiment of the most patriotic force that ever expressed the unity and the desire for independence of the inhabitants living between the Carpathians, the Danube river and the Black Sea – the RCP, the national-communist discourse proved that it had absolutely nothing in common with the modern theories of nation formation. Quite the contrary, Romanian national-communist discourse was not only perennialist, but largely primordialist, thus sharing numerous ideological characteristics with extreme-right ideologies such as the organic nationalist discourses from the end of the XIXth century and the beginning of the XXth century and legionarism, Romania's sui-generis type of fascism. And this was and still remains, for a regime pretending to have a Marxist ascendancy, quite an ideological dilemma.

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Conflicts and Instability in the Contemporary Security Environment*

Olesea Țaranu

Abstract: While current doctrines try to separate conflicts within two distinct categories – conventional versus irregular, there are, however, a series of contemporary conflicts that challenge this western view on war showing that the disjunctive manner of classification in ‘big and conventional’ versus ‘small and irregular’ is limited and simplistic. The military strategists as well as the academics used a series of concepts in order to describe the main shifts in the character of war – from the Fourth Generation Warfare (4GW) and ‘new wars’ to hybrid wars. This article aims to identify these mutations in war evolution in the new, post-Cold War international context. The traditional image we have on this well-known ‘labor division’ within the military field no longer reflects reality.

Keywords: war, conventional war, new wars, 4GW, hybrid wars

Introduction

When a war comes to an end, military strategists wonder what the next war would look like, what shape would it take and how the next enemy would fight. The same thing happened when the bipolar confrontation between USA and URSS ended. In the absence of a direct military confrontation, the superpowers of the Cold War have repeatedly come up against one another in a series of proxy wars, by means of allies and their own satellites. Even if for almost five decades the world has not witnessed a direct military conflict, this has been a period characterized by intense militarisation, major investments in the military sector, massive arming, nuclear arsenal development and competition for global supremacy. It's no secret to anyone that a potential armed conflict between the two actors would have taken the form of a large-scale conventional war, fought by national armies, in a symmetrical war on a specific ground – the plains of Western Germany. With the end of the Cold War and the avoidance of the ‘inevitable,’ the optimism emerged – among theoreticians, politicians, the public opinion and sometimes even among military experts. The military superiority of the United States was beyond question, the great winner in the competition for the global supremacy. There were no enemies left capable to face a conventional attack of the American army, the world's most potent army. The first war in Iraq

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was nothing but a confirmation of this state of affairs, respecting all the rigors of a conventional war fought by the book. Nevertheless, 'the book' would very soon prove its limits, unable as it was to predict a series of military conflicts that did not fit within the moulds of the conventional war. The war in Bosnia, the military intervention in Mogadishu, the war in Kosovo, the terrorist attacks that hit the United States on their own territory and the Global War against Terror initiated in response – all these events have challenged the traditional thought in the military domain and have questioned the manner in which the war was understood as a phenomenon in the new post-Cold War context. We have become undeniably the witnesses of certain mutations emerged in the manner of fight, organization, force deployment and war character. What exactly has brought about these transformations? Are they final? The large-scale conventional war fought by the national armies of the states is now history? What does the future war look like and who are the new combatants? These are only a few questions that will guide our approach which aims at following the evolution of war in the post-Cold War era and at identifying the shifts emerged in the new international context. The objective of such an approach is to contribute to the understanding of the character of the wars which keep on defying the international peace, the understanding of the forces that determine the new combatants to prefer certain fight strategies and to contribute to the outlining of a picture of future war, including a series of possible solutions available to the international actors.

The End of the Cold War and the Trends of a New Strategic Environment

In a complex analysis of the war phenomenon and of the transformations registered in the new context, Gat and Maoz identified, in 2001, three scenarios on the future of war (Maoz and Gat, 2001, 1-3). The first scenario considers war an outdated and useless instrument, subject to the possibility of transformation and the risk of disappearance as any other social institution (e.g. slavery or duel). Modern societies regard the war as an instrument incompatible with the new economic conditions, social norms, given in particular the enormous destructive capacities it supposes. The fact that during the years of the Cold War there was no major war between the powers is considered an indicator of the tendency to give up war as instrument of conflict resolution. The second scenario starts from the observation that war is a social institution as old as humanity, which permanently accompanied the individuals along their history and that almost 50 years of peace cannot represent a serious indicator attesting the elimination of war from the international practice. Even if war is influenced by the social, economic, technological and political developments suffering thus transformations in time, the phenomenon in itself and its essential forms of manifestation do not disappear. Thus, in summary, the second hypothesis argues that the essential structure of war will not change in the future. The third scenario seems to capture better the post-Cold War reality and starts from the

ascertainment of the fact that the world has faced fundamental transformations since the second global conflagration in all the domains of the human existence – political, economic, social, technological, etc. The same thing can also be said about war and the fight manner – though it has not disappeared, war has suffered dramatic transformations (Shultz and Dew, 2006, 1-17). If in the past the interstate symmetrical wars implying large-scale manoeuvres and conventional weaponry predominated, nowadays there can be seen a regionalization of conflicts, noting in particular the increase in the number of civil, ethnic and local conflicts, low-intensity conflicts implying guerrilla fights, attrition warfare and terrorist actions carried out by asymmetrical combatants. In conclusion, the two authors consider that war will not disappear but it will suffer a series of mutations adapting itself to a new context. Starting from this last finding related to the impact of context change on the form of manifestation of war as phenomenon, we shall try hereinafter to identify the main transformations suffered by the international post-Cold War environment that determined the increase of the conflict potential and favoured the transformation of war.

The disappearance of the Soviet Union and the end of the bipolar order had the impact of a major geopolitical seism. Numerous ethnic or national groups felt the opportunity of liberation and recognition and the elimination of the 'cover,' the withdrawal of the support, the absence of constraints and control from the part of the superpowers opened a veritable Pandora's box. A series of regional or local conflicts, kept previously under control, burst violently, unleashing frustrations and complaints, following ideological and nationalist objectives. In another category were the states whose leaders had privatised the power transforming the institutions, the citizens and the resources of the country into personal goods and in relation to which the superpowers had shown either an artificial support or disinterest. With the change of power balance at the global level, the internal groups of rebels overtook power imposing the same type of inefficient and dangerous government, perpetuating the cycle of violence and greediness (Zartman 2007, 4).

The new international context is marked by the rampant evolution of the globalisation phenomenon which supposes, *inter alia*, the elimination of all obstacles to the creation of a total freedom of economic forces, commerce without frontiers and the elimination of commercial barriers in order to open the territory towards the global movement of capital, goods and services. The rhythm of globalisation determines the reduction of the states' sovereignty and the emergence of new international actors, powerful players within the system; it determines the permeability of the national frontiers, the loss of the legitimate monopoly on coercion held traditionally by state actors; it also supports the processes of linguistic and cultural homogenization invading all life sectors. This phenomenon does not have only supporters and winners, determining the increase in the number of threats and in the degree of insecurity, creating an

environment characterised by the lack of certainty in a predictable future, essentially, of mitigation or loss of a distinct identity. All these aspects shape numerous frustrations, creating tension and amplifying the tendencies of localisation and isolation in relation to the 'Other,' the stranger. In these conditions, many of those feeling threatened by the economic and cultural impact of globalisation fall into the trap of radicalism and religious extremism (Williamson 2009, 13-14), a major threat to international peace and a source of conflict in the new security environment. The fast-growing rhythm of the population in certain areas of the world, especially those affected by poverty, the rapid urbanization within these regions concomitantly with the lack of decent life conditions contribute to the accumulation of pressures and the exacerbation of instability. And when these tendencies are doubled by the scarce presence of water, food or energy resources, violent conflicts are inevitable.

Another characteristic of the new international environment which contributes to the increase of the conflict potential refers to technological development, especially in the military domain. Although the increase of the global connectivity can bring numerous benefits for the states, individuals and for the international community in general, sometimes, it can generate a series of pervert effects, unwanted and extremely difficult to control – the export of terror and extremism, the increase of access to all forms of weapons of mass destruction, the use of internet in order to carry out cyber attacks, the manipulation of mass-media, etc.

A reality of the post-modern world, with deep implications for the security environment, is related to the presence of weak, failed or rogue states within the international system. Extremely vulnerable, incapable of ensuring internal order, exporters of instability and violence (Buzan 2000, 106-109), these states become genuine sanctuaries for criminal groups and extremist organisations, offering both a suitable ground for training and organisation and a rich area for recruiting new adepts.

In conclusion, we live now a 'new normality.' The international security is threatened by terrorist groups and organised crime, by weak and failed states incapable of ensuring the basic needs to their own citizens, by the absence or the scarceness of the vital resources. The concept of national sovereignty is the target of some unprecedented attacks, the entrance into a post-Westphalian era being brought into discussion; the technological evolution in the domain of communication, transport and global networks continues to render the frontiers more and more transparent; the economies – more interconnected and the access to information – possible in an unprecedented way. These effects of globalisation generate powerful pressures and contribute to the increase of the regional instability (Olson 2009, 3) and to the outbreak of some bloody conflicts. All these changes leave their mark on war producing significant shifts.

Distinct Visions on Post-Cold War Wars

With the end of the Cold War, numerous academics and experts in the field have reflected on the shifts suffered by the international environment, in an attempt to catch the impact of the transformation of the international strategic environment on war and the fight manner. Thus, a comprehensive process of analysis and re-conceptualisation began, the major stake being the identification of the main features of future war. Such an approach may and must allow mainly state actors, exposed to new threats, to prepare for future fights against asymmetrical, inventive and flexible enemies. If military specialists agree on the reference points of the new security environment and on the threats which contribute to context transformation, the opinions diverge when trying to conceptualise the future post-Cold War wars. While some people consider that we are confronted with a 'fourth generation war' (4GW), others argue that the term 'new wars' is the most adequate to describe the new realities. Another trend is represented by the military strategists opting for the concept of 'hybrid war' in an attempt to explain the mutations suffered by this phenomenon in the new context. Irrespective of the concept preferred, all these authors have contributed to the understanding of the global context, emphasizing the characteristics of future wars.

The Fourth Generation War

In a study on the evolution of modern war, the theoreticians and military analysts have defined four development stages. The first generation of the modern war, following the Westphalian peace was dominated by mass wars, culminating in the French revolution wars and the Napoleonic wars at the beginning of the 19th century. The second generation was characterised by the increase of the firepower and the manoeuvre capacity culminating in the First World War. The development of the manoeuvre capacity and the revolution initiated by the German army through the blitzkrieg tactics during the second world conflagration represent the distinctive features of the third generation war. Beginning with the end of the 1970s, following the Soviet-Afghan and American-Vietnamese wars, the fourth generation of wars registered a significant evolution, highlighting the capacity of a non-conventional enemy of exploiting for his own benefit the transformations from the political, economic and social environment (Frunzeti 2006, 96-97).

Even though the term is introduced in literature only in 1989 by William Lind (1989), this concept proves successful in the first years following the Cold War. The proponents of this concept argue that the development of the fourth generation war was favoured by the lost of the monopoly on violence by the nation-state, the appearance of non-state actors eager and able to challenge the legitimacy of the state, the evolution of globalisation and particularly of the advanced technology, the outbreak of cultural, ethnic and religious conflicts

(Robb 2004). In the framework of these conflicts, the borders between war and politics or soldiers and civilians disappear (Hoffman 2007, 18). The targets are both soldiers and non-combatants, religious ideas, political power, economic activities, international agreements but also people's minds. The fighters' actions target not only the physical destruction but also the mental and moral impact on the opponents (Williamson 2009, 3). The theoreticians of the new concept consider that the strategies and tactics of this new type of war appeared as almost a necessity, being triggered by the major discrepancies between state and non-state actors, as far as resources are concerned. In a disadvantaged position, non-state actors need to adopt irregular and asymmetrical methods in their attempt to avoid the military force of the enemy and to hit his critical political, cultural, communication points in order to affect the morale of the population and to destroy the leaders' will to continue the fight (Robb 2004). These asymmetrical fighters are willing to die for their beliefs, do not wear national uniforms, easily mingle among civilians being thus difficult to identify, are creative, always looking for innovative methods and tactics and do not take into account the international norms. Their attacks contribute to the creation of an atmosphere of uncertainty and distrust of authorities' capacity to ensure the protection of citizens, stress the divisions created within the civil society, affect the economic activity and destroy the internal cohesion of the society (Williamson 2009, 4). The fourth generation war is not a new form of war but rather a return to the war fought before the emergence of the nation-state. Neither tactics are new; they seem to be rather terrorist or guerrilla tactics but using modern technology (Williamson 2009, 7). In this case, the novelty is represented by the pattern of the combatants (states or non-state groups) and what motivates them to fight (Lind 2004, 7).

New Wars

The change of the international context with the end of the Cold War and the high number of bloody conflicts that burst on the African continent determined a series of authors to focus on the distinct realities within weak states, with a poor governance, considering that we are the witnesses of some significant shifts in the deployment manner of the war in these regions. One of the concepts that enjoyed success and visibility, especially among the academics, was that related to the 'new wars.' In order to understand the essence of this phenomenon, we will try to underline, briefly, the specificity of the 'old wars.' The origin of the old war must be found in the Western Europe of the 16th – 19th centuries, the evolution of this modern fight manner being closely linked to the development of the state as the main form of political organization within the international system. Building on the observation of the Prussian military strategist Carl von Clausewitz on the political character of war (and the famous theory of the 'remarkable trinity') as well as on Max Weber's conception on the essential characteristic of the state of representing the only form of organization holding

the monopoly on the legitimate use of violence, both internally and externally, we are able to outline the essence of this phenomenon attesting the fact that the modern war was the result of a rational calculation and that it was fought by, through and in the interest of the states. Mary Kaldor considered that old wars were at their peak at the middle of the 20th century when the use of science and technology for killing, doubled by the extraordinary capacity of massive mobilisation of the states led to unimaginable destructions. From this point of view, the author considers the Cold War a method of maintaining the idea of old war alive (Kaldor 2010, 15).

However, with the end of the Cold War and the fundamental change of the social relations that supported the old understanding of war, we witness today a dismissal of the Clausewitz/Weberian logic. The new, postmodern wars are based on three important assertions which seem to define them – the conflicts increasingly imply other actors than states, for other reasons than the traditional national interests, using tactics and instruments different from those associated with regular, professionalised armies (Butler 2009, 57). These are disorganised, even chaotic conflicts, powered by identity problems, fought by a wide range of combatants, supported by transnational networks illegally trafficking money, arms, people, by groups of organized crime, etc.

The catalyst of these new wars is globalisation, with its simultaneously integrative and disintegrative tendencies, the clear-cut economic disparities, the negative perceptions that it creates and most of all with the two serious crises it generates – state crisis and identity crisis (Butler 2009, 58-59). Leaving the states in an incapacity of controlling their relations, domestically and externally, contributing to the lost of the monopoly on the use of organised violence, emphasising a series of transnational phenomena beyond the state control, the state faces some major challenges which question its survival, determining the entrance into a post-Westphalian era. As products of a complex interdependence, the new wars emphasise this existential state crisis, representing serious threats to the security of millions. Unfortunately, the state crisis is doubled in the current context by an identity crisis. While the old wars were fought in the name of the national interest, calling for either the national identity or certain ideological principles such as liberalism, socialism or fascism, in the case of the new wars we can observe major transformations. At a time when the globalisation phenomenon challenges in a fundamental manner the state eroding its power, the national cohesion and the individuals' loyalty towards the state significantly diminish. In this case, it becomes obvious that citizens will look for what they have lost in other sources and the national identity associated to a declining state will be replaced by an ethnical, religious identity specific to a sub-group.

Thus, the new wars represent the actions of some sub-state groups enjoying the support offered by different transnational networks, actions aiming at contesting, eroding and replacing the state authority. The actors involved have

an interest in obtaining power and in ensuring economic gains without taking into account the lack of legitimacy of their actions or the restrictions imposed on using brute force. Often, these types of wars suppose a high degree of violence and brutality, violence being both a means for the achievement of the final objective and the objective in itself. The new type of war elevates the demonization of the Other to the level of a deliberate strategy and massacres, genocide, criminal activities, systematic violation of human rights are some of its frequent manifestations (Butler 2009, 60). The technological development does not play an essential role in these conflicts. The combatants largely rely on light but extremely bloody rudimentary weapons; the privatisation of arms production as well as arms trafficking favoured by the dismantling of the Soviet Union represent specific opportunities of which these forces take full advantage. In the place of professionalised hierarchically-organised armies, new wars imply irregular forces, paramilitary groups, mercenaries, organised crime unions. Civilians are usually the target of these groups and the differences between combatants and non-combatants, between barbarity and civilised behaviour, on which the modern society is based, become irrelevant (Butler 2009, 60). Unlike old wars which ended with a victory or a defeat, the end of new wars is not expected equally rapidly: different combatant parties have an interest in continuing the violence, both from a politically and economically point of view. Moreover, they have the tendency to infiltrate among refugees, deployed persons and criminal networks and to propagate the ideologies they produce (Kaldor 2010, 13). The supporters of the new wars concept also agree that these are not, actually, new. The novelty element is related to globalisation and this one, in turn, is linked to the changes occurred in the role of the state (Kaldor 2010, 23).

The Hybrid War – a New Paradigm

While, as we could notice, some authors consider that the post-Cold War wars represent the fourth generation wars or they share the belief that the term of new wars is more appropriate to describe the transformations occurred in the new international order, there is another category of authors that have reflected on the mutations suffered by the strategic environment and on their impact on the evolution of war. It should be noted that the latter group is formed by military strategists, former fighters or troop commanders (especially within Marine Corps), active participants in difficult missions of the US army that identified in the recent history a series of atypical missions which cannot be understood using the traditional language. The interventions in Mogadishu, Kosovo, Fallujah, Afghanistan, the war between Hezbollah and Israel from 2006 present a series of characteristics hard to explain by the military handbooks. These authors try to outline the mutations suffered by the war in the post-Cold War era opting for the use of a concept that has started to enjoy success and that can be found in the discourses of the officials as well as in a series of official documents and military strategies (American, British, Australian). Recognising

the significant dissipation of the differences between inter-state and intra-state conflicts, between combatants and civilians, between peace and war, military experts such as Frank Hoffman or James Mattis partly retake certain ideas that define the concepts of 'the fourth generation war' and 'new wars' and develop, in return, the concept of 'hybrid war' in order to describe the post-Cold War evolution. Starting from the recognition of the complex character of threats to the international security, threats determined or favoured by globalisation, arms and technology proliferation, the violent transnational extremism but also the resurrection of the former rival powers, Hoffman uses the term 'convergence' in order to describe war transformation – the convergence of the physical and psychological, combatants and non-combatants, violence and nation-building, the kinetic and nonkinetic (Hoffman 2009, 34). In an attempt to identify the reference points of the new international context and its impact on the US army, the two experts consider that the net conventional superiority of the American army determines other state and non-state actors to move out of the traditional military logic and seek some niche capabilities or some unexpected combination of tactics and technologies to gain an advantage (Mattis and Hoffman 2005, 1). Although the conventional war has not disappeared from the mix of instruments used by the international actors, Mattis, who led the American forces in Fallujah in 2004, declared: "I think the nation-state and conventional war is in a state of hibernation. I don't think it's gone away, but the most likely threats probably today are not going to be conventional or from another state" (Barnes and Spiegel 2008). This statement seems to be supported by recent evolutions registered by the institutes for conflict analysis. For example, according to the most recent HIIK study – Conflict Barometer 2014, during the last year there was no inter-state war (HIIK 2015, 16). And if the chances of engagement in a conventional symmetrical war are reduced, we must expect an increase of the visibility of irregular challenges – terrorism, insurgency, unrestricted warfare, guerrilla war or coercion by narco-criminals (Mattis and Hoffman 2005, 1). Future wars will not observe the clear-cut distinction between conventional/irregular, combatant/non-combatant. The future opponent will choose from the existent 'menu,' a mix of tactics and instruments that will allow him to avoid the direct confrontation in our terms, by our rules. As Hoffman argues, the future will be marked by hybrid wars in which states and non-state actors will use simultaneously more fight types – conventional, irregular, terrorist, disruptive and criminal aiming at destabilising the existent order. Evans, summarizing the new tendencies, argued that "symmetric and asymmetric wars merge and Microsoft coexists with machetes and stealth technology is met by suicide bombers" (Evans 2003, 140). Used both by states and non-state actors, by separate units or even by the same fight body, hybrid wars suppose the simultaneous use of a combination of conventional capabilities, irregular tactics, terrorist attacks and elements of organised crime in order to obtain a synergetic effect (Hoffman 2007, 14). The term hybrid is

applicable both at the organisational level (where we can find simultaneously a hierarchical political structure and decentralised cells or networks of tactic units) as well as at the level of the means used. The hybrid opponents will exploit the access to modern and sophisticated military capabilities, combining the lethal character of the state conflict and the fanaticism of the irregular wars (Hoffman 2009, 38). Thus, the future does not necessarily imply the increase of the threats number but the convergence of the existent threats in a hybrid form of war. The most important mutation in the war character implies the dissipation of the borders delimitating the different fight methods and their simultaneous combination.

Among the victims of the terrorist attacks from 2001 we can also find the feeling of invulnerability of the United States along with the West preference for conventional wars. That was a lesson for everyone – allies or enemies, state or non-state actors. The terrorists' success represented a proof of the mutations occurred in the fight manner showing the necessity of adaptation to the new context – a conceptual, strategic, operational adaptation. The obstinacy of persisting within the same intellectual and institutional borders is nothing but a losing solution in relation to a potential enemy not suffering from our handicap – the intellectual rigidity. The term 'hybrid war' describes the increasing complexity of the future conflicts and the necessity of flexible military forces able to easily adapt. Nowadays combatants (especially states) wishing to gain hybrid wars must learn to strike a balance between the conventional capabilities specific to the Cold War and the fight style specific to small-scale irregular wars. Troops must be prepared to fight and, at the same time, to carry out missions of peacekeeping, reconstructions, stability, international aid, etc. When the enemy acts on a multidimensional level, the national armies of the states trying to maintain their position in the military hierarchy and to obtain the victory must do the same. The future wars will require flexible 'multi-purpose' units and an essential role will be played by the leaders of these units who will have to prove innovative thinking and an increased capacity of adaptation in a complex and changing environment. The future enemies will not adopt tactics specific to the weak and they will not retreat into the mountains. On the contrary, they will choose "tactics of the smart and agile, presenting greater reach and lethality. They may attempt to operate within heavily populated cities, and use the networks of an urban metropolis to maneuver within as well as to sustain themselves" (Hoffman 2007, 43). As demonstrated by the Hezbollah fighters in their fight against the much more powerful Israeli army in Lebanon, by a series of small-scale Jihadist organisations or, more recently by the pro-Russian troops in the east of Ukraine, some extremely disciplined well trained and spread out cells may contest and challenge the modern conventional forces by using an innovative and concurrent mix of guerrilla tactics and performing technologies within the densely populated urban centres. In a study on hybrid wars, colonel John McCuenn argued that for winning this new form of war, the West must

obtain simultaneous victories on three battle fields – on the conventional battle field, through the conventional operations conceived with the aim of achieving long-term objectives, on the field represented by the indigenous population from the conflict area through some strategies of the type ‘clear, control and counter-organize’ and on the battlefield represented by the indigenous population and the international community through actions aiming at winning and maintaining war support and legitimacy (McCuenn 2008, 111). The conclusions of the military expert emphasize a distinctive feature of the new wars – fights are fought not only physically, on a traditional battlefield but also, and maybe in an equal measure, among the indigenous populations, home front, and international populations. Understanding this state of affairs means understanding both the threat and the solution. By ‘clearing, controlling and counter-organizing’ the population simultaneously with conventional operations, insurgencies and civil wars could be prevented. Essentially, these actions seek to ensure stability, promote local values, identify and train potential leaders, support the bottom-up development, protect the indigenous population and contribute to the reduction of the attractiveness of the insurgent organisations offering alternatives (McCuenn 2008, 111-112).

Conclusions

The wars of the future will be difficult to label as conventional or irregular. The transformations suffered by the international context and the war as a phenomenon will determine the blurring of the demarcation line between the two classic fight manners. It’s highly probable that the great majority of future conflicts will take the form of hybrid wars. The traditional form of conflict implying two national armies will be less predominant in comparison to the non-traditional types. This is particularly the case of the United States of America. Very few armies may hope to obtain a victory against the American troops using only the traditional fight methods. It is inevitable that those state actors or even non-state entities willing to contest their supremacy to opt for hybrid forms of fight in order to achieve their own objectives.

The hybrid war, without being an abnormality, will represent an essential characteristic of the future security environment. Though it does not exclude the outbreak of traditional, conventional, symmetric wars, the hybridisation tendency of the war will be a major challenge for the international actors of the 21st century. Disregarding this mutation and focusing exclusively on the development of the conventional arsenal is nothing but a losing solution. No state army has recently succeeded in obtaining victory against a non-state enemy, in a non-conventional war. The evolution of war requires the increase of the flexibility and adaptability degree. Future enemies will not fight by our rules, the wars we choose. The first lesson of the military history – ‘the enemy gets a vote’ – continues to be currently relevant and the soldiers hoping to obtain

victory against an apparently weaker, but at the same time more flexible, innovative, sophisticated and determined enemy must be aware of this.

If these mutations in war evolution are based on the universal crisis of state legitimacy we can conclude that all states are vulnerable to the new hybrid threats.

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Social Science Investigations

Ethical Competence for Teachers: A Possible Model*

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Abstract: In Education Sciences, the notion of ‘competence’ is widely used, both as an aim to be reached with students and as performance in teachers’ education. This article advances a type of competence that is highly relevant for teachers’ work, namely the ‘ethical competence.’ Ethical competence enables teachers to responsibly deal with the daily challenges arising from their professional roles. In this study, I put forward a definition of ethical competence and I propose a conceptual structure, both meant to support the illustration, description, and development of ethical competence for teachers.

Keywords: ethical competence, ethical knowledge, ethical skills, ethical values

Introduction

‘Ethical competence’ is not a notion commonly used in everyday language, but mostly in academic and professional contexts. My decision to write on this topic was motivated by several reasons. The first reason is that although ethical competence is an attractive, powerful, and promising concept, with several advantages for research and practice (De Schrijver and Maesschalck 2013), scholars have often neglected it. So far, most studies on ethical competence have arisen from fields such as Medical Ethics and Business Ethics. In some countries, Romania included, it does not even appear in national educational documents such as *The Ethical Code for Teachers* or *The National Professional Standards for Teachers*, documents supporting the consolidation of professional identity. The second reason is that education has a strong normative dimension (Berlak and Berlak 1981; Buzzelli and Johnston 2001) and an axiological one (Cucuș 1995; Gardner 2005, 2007).

Education is fundamentally and primarily about values. Educators have the fundamental role in transmitting the Greek triad of values (Goodness – Truth – Beauty). Among these, the moral values are essential. Teaching is a ‘moral endeavour’ (Hansen 1998) and the teacher plays the role of a ‘moral agent’

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(Buzzelli and Johnston 2001). He or she enters into relationships with several actors: children, colleagues, parents, and he/she does that during long intervals. These relationships are complex, unpredictable and involve many decisions. They constitute the background for the educational process. Before being a teaching-learning relationship, it is a moral relationship involving people and their values. As Campbell (2008) has argued, the ways in which teachers respond to the daily events related to teaching-learning-evaluation should pass through a selection process in which moral dimension is important: "Ethics and teaching seem inherently compatible and unavoidably intertwined" (Campbell 2008, 358).

A teacher lacking ethical competence commits, no doubt, certain mistakes in relating to students, and the pedagogical relationship is the background of teaching. In this activity, the priority is not the technical, but the human aspect, that is, to show equal treatment, empathy. Before being a relationship aiming to build the student's personality, it is a relationship between two persons, who have to agree and understand each other as people. McPherson, Kearney and Plax (2003) claim that two thirds of teachers engage in behaviors that demoralize students. Among the destructive and offensive aspects of communication, we may mention anger, disappointment, jealousy, and embarrassment (Boice 1996). The poor development of ethical competence has multiple harmful influences on students. It may affect the short-, average and long-term process of learning (Braxton, Bayer and Noseworthy 2004), by slowing or impeding the development of cognitive and emotional skills. The student's overall psychological balance can be affected, as well as his/her healthy insertion in the social environment and his/her chances of building the desired career. Poenaru and Sava (1998) and Popovici (2000) use the concept of didactogeny to designate the negative impact certain undesired behaviours of teachers can have on students. Neglecting the moral dimension of the pedagogical relationship may lead to dysfunctions such as anxiety, lack of self-confidence, fear of school, and/or opposition to school requirements.

Ethical competence can be understood as the psychological skill that supports teachers to find morally adequate solutions to daily professional problems. Given the major impact of the teaching profession on children's lives, the research on the educators' ethical competence is necessary and undoubtedly connected to the professional component. We argue that ethical competence is not just a simple professional skill, but rather it is fundamental and constitutive for the teaching role.

The central concept of this study is *competence*. We shall rely on it in order to understand the meaning of the teachers' ethical competence. The assumption is that ethical competence is an indispensable condition for the proper exercise of professional roles in education. In this study, I will propose a definition for the concept of ethical competence of teachers, which I shall explain by the means of a conceptual structure. The classic elements of competence (knowledge, skills,

and values) are the basic landmarks for the presentation of the ethical competence of teachers. Ethical knowledge, ethical skills, and ethical values will be analyzed in relation to the context of the teachers' work, accentuating specific traits.

Defining Ethical Competence

Defining competence is not easy, as it implies epistemological, ethical, and political controversies (Tarrant 2000). As a highly complex finality, competence has been at the centre of debates and research in various fields, such as Psychology, the Management of Human Resources, Social Sciences, Science Education, etc. Most commonly, competence is described as an ensemble of skills, knowledge, attitudes, and values that enable the efficient carrying out of an activity. The more diverse the experiences accumulated, the finer is the regulation of thought and action, resources and strategies (Perrenoud 1998). In a very general sense, competence includes dynamic knowledge, which is activated in a number of situations, involving *savoir-dire*, *savoir-faire*, and *savoir-être* (Minder 2003).

There have been several attempts at theoretically outlining the concept of ethical competence. De Schrijver and Maesschalck (2013) synthesize three types of definitions: general definitions, definitions based on James Rest's (1986) theory, and definitions based on the KSAs structure (*Knowledge, Skills, and Attitudes*). The first type of definitions tries to capture a general point of view on ethical behaviour. What does ethical behaviour mean? For Gardner (2007), for instance, an ethical relationship is of the type: *Person* → *Role*. By assuming an ethical position, the individual regards himself or herself as a member of a profession and ask himself/herself how he/she should behave in order to fulfil this role successfully. In order to illustrate the second type of definitions, I shall resort directly to Rest's (1986) *Four-Component Model*. Rest's research has led to the conclusion that moral action is the result of four psychological sub-processes: moral awareness, moral judgment or reasoning, moral motivation, and moral character. Illustrations for the third type of definitions are provided by Kavathatzopoulos (2002), who considers that ethical competence for business includes: high ethical awareness, individual skills to handle ethical issues, functional organizational structure and routines, communication and argumentation skills, confidence, and emotional strength.

In this study, competence will be approached at an individual level, not at a distributed level. It will be understood as a personal and not as a task-related characteristic (Stoof et al. 2002). I have, thus, constructed a definition from a more general perspective, one that reads as follows: ethical competence is a complex structure of knowledge, skills, values, and attitudes that offer support for the complex constitutive ethical role of the teacher, as a moral model for students. Developing ethical competence for teachers includes a set of elements, such as: 1. knowledge of and respect for moral values and norms; 2. the ability to

sensitively recognize moral situations; 3. the ability to correctly assess solutions from a moral perspective; 4. the ability to overcome inner obstacles in order to pursue moral goals.

I would also like to highlight the close connection between ethical competence and professional freedom. Ethical competence enables teachers to freely and autonomously relate to their tasks. It does not mean obedience to institutional rules, superficial adaptation or circumventing the rules, but freely reflecting on the space of professional freedom. Ethical competence enables teachers to reflect on professional practices and pedagogical relationships. It renders professional autonomy possible, as well as a genuine approach to freedom.

Ethical competence is not limited to the relational aspects of the teacher's work, but also relates to the whole set of a teacher's professional responsibilities: curricular design, lesson achievement, selection of teaching, and evaluation methods.

Components of Ethical Competence for Teachers

The above definition of ethical competence demands clarifications. We shall further rely on four elements of competence: ethical knowledge, ethical skills, ethical values, and ethical attitudes.

Let us start with knowledge. The literature on the types of knowledge related to teaching is vast (Cochran 1993; Grossman 1990; Shulman 1999; Wilson et al. 1987). Different approaches have been applied to understand teacher's knowledge (political, economic, axiological, etc). It is obvious that teacher's relation with knowledge is essential, and that knowledge relates to teaching in different forms.

Ethical knowledge is explained by Cambell (2010, 33):

Ethical knowledge is the term I have given to the heightened awareness that teachers – some more than others – develop in response to their recognition of their role as moral agents. As a kind of virtue-in-action, ethical knowledge enables teachers to make conceptual and practical links between core moral and ethical values such as honesty, compassion, fairness, and respect for others and their own daily choices and actions. It moves teachers beyond viewing teaching solely in technical, pedagogical, curricular, disciplinary, and evaluative terms to appreciating the potentially moral and ethical impact their practice has, both formally and informally, on students.

This approach equals ethical knowledge with the entire ethical competence, as it includes knowledge, skills characteristic of ethical action (sensitivity, motivation), values, and attitudes.

Ethical knowledge can be conceived as an intuitive, tacit, and experiential type of knowledge. For instance, some psychologists claim that moral judgment is fully nourished by intuition and tacit knowledge. Although psychological research has long emphasized the role of conscious and rational reasoning

processes, recent models focus on the role of the unconscious and intuitive processes in moral judgment (Haidt 2007; Bortolotti 2011). Moral decision-making frequently occurs in complex situations that cannot be addressed by standard inferential reasoning. Therefore, we must reconsider the role of non-inferential forms of cognition, including moral intuition (Vokey and Kerr 2011). Although it has been traditionally acknowledged that reflection is the best way to make the best choices, it seems that this is not quite so (Bortolotti 2011). Thinking about reasons does not improve the choices people make. In many cases, reflection is compromising rather than promoting good decision-making.

Husu (2003) argues about the use of common sense in teaching. In his study on building ethical representations in teachers' pedagogical practices, Husu (2003) claims that "...the social processes involved in the teacher's school settings were not based to any great extent upon pre-established ethical reasoning, but on 'socially shared *identities of feeling*' (Shotter 1993, 54) that teachers create in the flow of activity between them. [...] Teachers feel not only entitled, but also forced to use their common sense in teaching" (Husu 2003, 17).

According to Dreyfus (1997), competence implies an unconscious, intuitive and spontaneous functioning, but decision-making is rational. Only at the level expert, decision-making is intuitive. Therefore, we may speak of several types of intuitions: intuitions in the absence of theoretical knowledge and informed intuitions. "At one extreme is the instantaneous, purely emotional, often irrational reaction to a situation. At the other is intuition that complements and augments fairly thorough analytical reasoning about the options available to the decision maker" (Patton 2003, 989). Ideally, in education, we should reach ethically informed intuitions, but given the precariousness of the teachers' initial training in ethics (Campbell 2011), this stage remains a desideratum. In this paper, I argue that both types of intuition provide material for ethical judgment and decision-making.

Experiential knowledge also plays a relevant role in pedagogical practice, since each educator is formed over time and gradually learns his or her teaching roles. Among the elements of experiential learning, I need to mention here the retention of valuable practices, assimilation of a useful daily routine, constant redefinition of situations, and introduction of one's own frame of analysis of the educational environment. Building and exercising moral competence also demands experience accumulated over time, as well as construction of the teacher's character. The teacher's response to critical incidents depends on the relationships with parents, students, and colleagues. It implies courage, communication, empathy, honesty, and balance.

What types of theoretical knowledge does the development of ethical competences support? It is mostly about the knowledge of ethical theories (Utilitarianism, Deontology, and The Ethics of Virtues). Ethical competence should not be equated to its strict application. Ethical erudition in the absence of ethical vocation is ridiculous (Pleșu 2008). From a business ethics perspective,

Kavathatzopoulos (2002) identifies several elements of theoretical knowledge as components of ethical competence: knowledge of the normative foundations of the field; knowledge of the laws, legal rules, and professional ethical codes; knowledge of the structure and culture of organizations, along with an understanding of human behaviour in organizations; knowledge of organization development and the design approach. All these elements can also be seen as part of the teachers' ethical competence. In conclusion, one can argue that ethical erudition is not sufficient, but necessary, as it nourishes intuitive knowledge.

Ethical skills support the teacher as 'reflexive practitioner' (Schön 1983), involved in exerting occupational roles on a daily basis. In this research paper, I have chosen to present these skills by taking into consideration four elements of moral conduct identified by James Rest (1994):

1. *The receptiveness component.* Ethical sensitivity (Endicott 2001) or moral awareness (Rest 1994) refers to recognizing a particular situation as a morally relevant issue. The empathic interpretation of a situation helping to establish who is implicated, what actions to take, and the possible reactions and outcomes that might result is involved here (Endicott 2001). Most generally, it means being aware of one's self and other people, of one's environment, with everything implied by this attitude. For Gardner (2007), receptiveness may be equated to a respectful mind.
2. *The reasoning component* refers to ethical judgment (Bock 2001) or moral judgment (Rest 1994). Goodlad and colleagues (1993) argue that teachers' judgments are generally more important than the technical elements of their work. The judgments are nourished by the teacher's socio-cultural, moral and political beliefs. It is not enough to recognize that teachers constantly have to be in the middle of conflicting forces. They also have to cope with this difficult matter, and this depends on their ethical judgment (Colnerud 2006). This component refers to formulating and evaluating morally justified solutions to the issue at stake. This step requires reasoning through the possible choices to determine which of them are ethically sound (Rest 1994).
3. *The moral motivation component* or ethical motivation (Lies and Narvaez 2001). The relevant question is "Why be moral?" The answer refers to giving priority to ethical action over other goals and needs. The subjects should find internal resources to help them follow the moral course of the action instead of transitory interests. For Oser (2013) moral motivation is "an inner state, a mechanism leading to act or not to act morally" (Oser 2013, 14).
4. *The component of implementation* or moral action (Narvaez, Schiller, Gardner, Staples 2001). It refers to putting into practice the morally correct decision. In order to complete the moral process, character traits such as perseverance, integrity, and courage are required.

Certainly, these four components are closely related and their separation is purely theoretical. In order to achieve a moral act, receptiveness, judgment, motivation, and action should function altogether.

Ethical Values and Ethical Attitudes

Macaulay and Lawton (2006) have argued that the transition from virtue to competence is a principle of public service, noticing that, despite various perspectives, the concepts of *virtue* and *competence* are, in practice, very similar. The author who most accurately expresses the connection between values and competence is Georg Lind (2004). For Lind, moral competence cannot be defined and measured without reference to an individual's moral ideals or principles. He has elaborated 'the dual aspect model of moral behaviour,' according to which moral competence is determined, on one hand, by the ideal values and moral principles of the individual and, on the other hand, by moral actions. We cannot speak of a morally competent person without reference to moral principles and values.

One question to ask at this point is what are the ethical values of the teaching profession mentioned by different authors? The list is very long. I have identified arguments for including in this list the following concepts: *the value of care* (Noddings 1984; Goldstein and Lake 2000), the *best interest of the student* (Stefkovich and O'Brien 2004), *responsibility, honesty, tolerance, loyalty, courtesy, compassion, integrity, fairness, care, and respect* (Starrat 1994), and *responsibility, justice, care, truthfulness, and commitment* (Oser 1991).

Ethical values are related to the belief in moral good as a universal value. Based on the suggestions provided by the authors mentioned above, I propose in this paper seven core values of teachers' ethical competence. These values are *care, freedom, autonomy, justice, respect, responsibility, and integrity*. The motivation for selecting these values is the following: the values that characterize the teachers' professional work are not determined by personal choice. In any profession, the orientation is towards achievement of social, altruistic goals and the teaching profession is no exception to this rule. I have selected these values because they meet the children's needs – as 'clients' of the teaching profession – as well as the educators' needs. The basic needs of school-age children are met by building a positive frame for learning. The concept that guides and measures the goodness, rightness and appropriateness of educational policies and practices is the 'best interest of the student' (Stefkovich 2014, citing Walker 1995). For Stefkovich (2014), 'the students' best interests' are at the center of the ethics of the profession which encompasses the ethics of justice, the ethics of care, and the ethics of critique. The educators' needs as professionals support the teacher's dignity as the person who cannot conduct his/ her activity in any material and spiritual circumstances. In a draft of the *Ethical code for Teachers* from France, Gilbert Longhi (2000) argued that teachers might refuse

to conduct educational activities when the material prerequisites for exercising are not ensured.

These seven ethical values are relevant for the teacher's work and, hence, they are present in the vast majority of ethical codes of the teaching profession around the world. The same values are required in other professions as well, but they are eventually understood in a different manner or even slightly modified depending on the nature of professional duties specific for each profession.

In my previous research, I have focussed on a general frame for understanding these values, with more details in Ghițău (2013), but we go with a brief presentation of those in here, too:

1. *Freedom*. The usual meaning of 'freedom' sends to the ability to make decisions according to one's own will, in the absence of any constraints. When we say 'freedom,' we think of endless possibilities. However, real freedom is based on respect of and for the rules. Absolute freedom, beyond all interferences, is nothing but an illusion. It also implies limits, since it relies on other people's moral duties and judgement. Being free does not mean to defy somebody or something, does not mean to ignore moral values. Devoid of ethical reasons, freedom is associated with human decay. Authentic freedom is correlated with positive axiological orientations.

One should further identify several marks of freedom in the school environment: the possibility to create a space free communication; the absence of obstacles in expressing opinions and the colleagues' respect for one's decisions; the absence of external constraints in teaching and evaluation (no interference practices); the freedom in the pursuit, development and transmission of knowledge. Teachers' professional freedom is not without limitations. One cannot deviate from the content of the curriculum or ignore specified aims of education. Situations such as indoctrination, aggression, and obscenity should not occur. Concerning teacher's freedom of expression, Sadker and Sadker (1988) highlighted clear boundaries, such as disclosure of confidential materials, malicious, and/or false public statements about school. Obscene and blasphemous forms of expression are not protected by academic freedom.

2. *Autonomy*. Authentic morality relies on autonomy. Jean Piaget (1968) regarded moral autonomy as an individual's stage of full moral development, opposing it to moral heteronomy. Autonomous people have their own motivation and are governed by their own reasoning. They recognize the presence of limits and constraints, but reflect upon these restrictions and what happens around them. Pedagogical autonomy means that the school system does not intervene in the teachers' work, assuming that they are fully competent in their work (Eden 2001). Pedagogical autonomy is much more relevant than physical autonomy – the latter may admit certain exceptions.

3. *Justice / Fairness*. The concept of justice is not at all obsolete or abstract in relation to education. School has overcome the stage of being perceived as the

place where 'teachers command and students obey' and justice is no longer the prerogative of people whose power is given by status. Justice, as a social value, is a universal aspiration. When they designed the institutional code of university ethics, Miroiu et al. (2005) identified the following themes for 'justice and equity' (Miroiu et al. 2005, 20-23): non-discrimination and equality of opportunity, the elimination of conflicts of interest, prevention, and control of corruption. Justice in education may signify very different, apparently contradictory things, depending on the context. In certain situations, fairness requires that all students have the same opportunities. In other situations, fairness means treating students differently because they have different educational needs.

Related to the issue of justice in school there are three other issues that need to be discussed (Lovat et al. 2002): the distribution of time and attention to students, establishing rewards and punishments for students, and the monitoring of granting professional opportunities to teachers.

4. *Respect* implies, most generally, "a relation between a subject and an object in which the subject responds to the object from a certain perspective in some appropriate way" (Dillon 2014, 4). The respectful subject is always a person, a human being able to express gratitude. Respect implies concession, overcoming one's egocentrism, without however annulling one's self. Mutuality of respect is the basis for interpersonal morality. Risking appearing obsolete, we emphasize that the teaching activity cannot be conducted in the absence of an atmosphere of respect, be it even formal. Respect provides the basis for the assertion of other values. There are several hypostases of respect in the school environment:

- Respect for students' culture (ethnicity, race, gender, economic status); this form of respect implies designing and implementing the curriculum appropriately, in accordance with the students' background and cultural differences.
- Respect for the students' psychological characteristics (cognitive skills, social skills, language abilities etc.); any student deserves the teacher's attention in order to develop his/her potential, as allowed by his/her individual psychological profile.
- Respect for people who support education (teachers, counsellors, principal(s), etc.)

5. *Responsibility*. Establishing responsibilities by setting the rights and duties for each category of teachers will lead to a clear delineation of this professional group. Directly or indirectly, school 'is held accountable' for the 'students' performances.' A high level of performance is reflected, on the long term, in the students' professional success.

Some categories of professional responsibilities are:

- a. Responsibilities in relation to the teaching process (related to the teaching-learning-evaluation process and the elements they imply: objectives, contents, methods, teaching relations etc.) - are the most important, because they describe the essence of the profession. An educator should, first of all,

develop quality lessons. Generally speaking, teachers are acting responsibly in school when: the teaching design is carefully conducted (the relation between objectives, contents, methods and evaluation is ensured); the teaching principles are complied with; the teaching and evaluation methodologies are appropriate for the context. Outside the school, teachers show responsibility when they display the values of healthy and civilized living.

b. Responsibilities in relation to the school institution – they constitute the duties comprised by laws, statutes, and regulations;

c. Responsibilities in relation to parents and the (local, regional) community.

6. *Care*. Generally, care is defined as “a species activity that includes everything we do to maintain, continue, and repair our ‘world’ so that we can live in it as well as possible. That world includes our bodies, us, and our environment, all of which seek to interweave in a complex, life-sustaining web” (Tronto 1993, 103). Noddings (1984) drew the distinction between natural caring and ethical caring. When I care for someone because ‘I want’ to care, I am engaged in natural caring. When I care for someone because ‘I must’ care, I am engaged in ethical caring. Natural caring applies at the family level, whereas ethical caring applies at the level of occupations.

Caring is not just smiles and hugs (Goldstein 1998). This is a superficial approach. Caring is a way of being connected with someone, not a set of specific behaviours (Noddings 1992). It involves a complex relationship, both intellectual and emotional, which helps children to develop harmoniously.

Straits (2007, 174) has named the indicators of caring for college instruction: being available to students, respecting students as individuals, willing to give extra effort, welcoming questions in class, inviting discussion outside of class, getting to know students, wanting students to learn / succeed. Isenbarger and Zembylas (2006, 132) have established a taxonomy of caring in education: 1. pedagogical caring – caring about children’s academic expectations; 2. moral caring – caring about the values communicated in learning; 3. cultural caring – responsiveness related to children’s culture.

The research focused on teacher’s care is related to the following problems: relations between teachers and students (Doyle and Doyle 2003; Guzman et al. 2008), selection of teaching strategies (Gardner 2007), class management (Watson 2010), and curriculum (Apple 1979).

Caring is important not only at elementary and secondary levels, but at the university level as well (Guzman et al. 2008; Sumsion 2000; Straits 2007). In fact, a concern for caring in teachers’ education system has long-term effects, because the future teachers will replicate the caring conduct in their professional activities.

Along with care, generosity is another notion invoked in describing an authentic educational relationship. Generosity is the very meaning of the teaching profession. It rejects corporatism and reveals the authentic relationship with the other, as Etchegoyen argues (1991).

7. *Integrity*. Being upright means being moral *par excellence*, admitting no compromises in applying moral principles. Consistency between words and actions is essential. Integrity is the quintessence of moral values, because it implies a synthesis of virtues: honesty, courage, respect. It is, at the same time, attitude, goal, and means. Tirri (2001) shows that teachers are not always aware of their integrity. But, when faced with a situation that involves feelings of anxiety and uncertainty, they ask themselves whether they are acting with integrity. Klaassen (2012, 14) presents the moral courage of teachers as a combination of three aspects: 1. daring to present their own principles and defend them against students, parents, colleagues, and school leaders; 2. the 'fortitude' of having the student's best interest in mind under all circumstances, the patience and the wakefulness involved in this constant process; 3. the courage to be a moral role model for students and others.

These values refer, first of all, to the teaching profession and their representatives, teachers. Teachers should display in their activities as ethical principles, this set of values, values that guide all the interactions between teachers and their students, parents, and colleagues.

Some values gain increased relevance depending on the students' development stage. For example, for educators who work with smaller children, up to ten years old, the main value should be care, followed by the others. The reason is the fact that younger children need positive emotional support before other things. They need to build affection towards their colleagues and educators. Many studies bring evidence for the hypothesis of the prevalence of the emotional support in the development of personality (Goldstein and Lake 2000; Raver 2002; Goleman 2008).

The internalization of this set of ethical values contributes to the building of a *personal ethos*, one that actively supports the teaching roles. Obviously, the list is open to include other virtues, as well. Mitrofan (1988, 41) presents a series of traits which are essential for the development of pedagogical skills. These are emotional traits (kindness, cheerfulness, generosity, passion, enthusiasm), volitional traits (firmness, courage, perseverance, intransigency, patience, self-control) and moral traits (consonance between word and action, sense of measure, balance between exigency and tolerance, honesty, modesty, equity). These traits could be part of the teachers' ethical competence.

Conclusions

In this study, I have chosen to focus mostly on the teachers' ethical competence as presented in my definition and based on such a frame or structure as Knowledge – Skills – Values and Attitudes. Thus, I have by and large highlighted the following central ideas: a) Ethical competence deserves special attention in the field of pedagogical research, since it is a fundamental feature teachers need in order to fully fulfil their roles. Neglecting the moral dimension of the relationship between teachers and students may lead to dysfunctions, such as

anxiety, lack of self-confidence, persistent fear towards school, opposition to school requirements etc.; b) Ethical competence includes knowledge, skills, values, and attitudes that support the teacher as a reflexive actor and moral model for the students. The teaching profession means, therefore, not just the successful transmission of information from a sender to a group of receivers, but a constant intellectual and moral effort, a decision-making process, and a struggle to follow an axiological path. c) The appropriate approach to ethical competence for teachers should resort both in theoretical knowledge and practical knowledge; d) Ethical skills for teachers include references to four main components of the ethical behaviour which are receptiveness, reasoning, motivation, and implementation; e) Although the essence of ethical values remains the same, regardless of the profession, their contextualization in education adds certain specific features, enhancing, thus, the knowledge in the field of professional judgment.

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REVIEW ESSAY

Will Economic Globalization Result in Cultural Product Homogenization, in Theory and Practice?

Todd J. Barry

Abstract: Globalization is resulting in complex decisions by businesses as to where and what to produce, while free trade is resulting in a greater menu of choices for consumers, often with the blending of products and goods from various cultures, called 'glocalization.' This paper reviews the theories and practices behind these current happenings, which are each economic, political-economic, institutional, and sociological, first by looking at the supply side of why certain countries produce the goods that they do, and then at the demand side, why consumers have particular, cultural tastes and preferences for goods. It also proffers theories to explain firm location and that of intra-industry trade. This occurs when countries trade similar products rather than differentiating, as economic theory would suggest. After reviewing the literature, through numerous examples of political-economy and culture, it argues somewhat normatively that differences in culture and goods are a strength to the world community, and that globalization in the end will not likely result in a singular global culture with a uniformity of exactly identical economic goods anytime in the near future.

Keywords: globalization, global culture, melting pot, product homogenization, glocalization

The Supply of Culturally Diverse Goods

The past few centuries have seen enormous changes through globalization, whether one considers that it began with: the roads of Rome, the travels of Marco Polo, the voyages of Columbus and da Gama, the European repeal of the Corn Laws, the invention of the steam engine, the gold standard and Victorian England, the World War II conference at Bretton Woods, or the Internet (Frieden 2006). In many respects, cultures, and thus products, are changing dramatically; writes economist Tyler Cowen, "On one thing the whole world seems to agree: Globalization is homogenizing cultures" (Cowen 2002). Hopper quotes Ulf Hannerz as coining a new phrase, the "global ecumene," or the possible development of a world culture with similar products (Hopper 2007). To the question if we will have a market based on technology, or of materialism and the

continued expansion of consumer goods, the answer is easily “yes.” The question if this market will be completely global is more difficult. Recently, scholars have turned to this cultural market aspect of globalization. As one author writes, “a scientific approach ... is only beginning to develop” (Cesari 2002).

In my first year of college, I was amazed to find my roommates all using similar soaps and toothpaste, even by students from different parts of the U.S and the world. How could this be, from such faraway places? Only later was I introduced to the concept of globalization, and that economist Milton Friedman would twirl around a pencil, showing that few people even knew that the graphite comes from Africa, the rubber from the Amazon River, and the wood from North America. It would be amazing to go back in time to the Enlightenment in colonial America, when the likes of such individuals as Benjamin Franklin could probably tell a visitor where each of the components of new gadgets came from, all over “the Orient.” Today, consumers are unaware of supply or simply do not care. Over time, countries have based the goods they produce, and consume, on economic comparative advantage, resources, institutions, culture, and political-economic systems. Culture in this context is defined as music, clothing, values, preferences, food, entertainment, and just about everything else.

Early man, point out anthropologists, known as Cro Magnons, carried around trinkets and small pieces of art, that they traded with each other, and that these cultural goods maintained a unity, that may have enabled them to out-survive Neanderthal man. The first economist and philosopher to write about culture, however, was the German Max Weber in the late 19th Century, but since then the general opinion, as professed by Francis Fukuyama (1999), is that culture has little effect upon economics. However, both the effect and the recognition are changing with globalization. The literature indicates that because of globalization, time and space no longer constrain culture or cultural products. Erez and Gati (2004) write that there are two levels of culture, a global one, and an individual one, which are perpetually influencing each other in both directions, such that culture is dynamic and completely changing. Abu-Febiri (2006) notes that globalization is causing true multiculturalism, but destroying cultural diversity, and that a holistic curriculum in schools is required.

Khondker (2006) writes that the movement of different cultures closer together has often produced conflict, whether economic, social, or political. This is similar to what political-scientist Samuel P. Huntington (1993) called the “clash of civilizations,” which America and the West are now experiencing with the mid-East, and possibly with Asia in the future. But while the United States imports numerous products from Asia, Asia is not as quick at adopting American products, aside from financial goods. Another author, Buzan (2010), argues that culture can change from civilizations expanding or conquering another, politically, socially, or economically, and that culture is not a problem for stability, but that political structure is. This reminds one of World Wars I and II,

which saw the spread of American jazz music overseas. Doku and Asante (2011) echo Erez and Gati in writing that people today have a bi-cultural identity, of their home and globally, and that there is a “contamination” and loss of cultural identity from borrowing from other places.

To study the effects of economic and cultural globalization and their affect upon products, one must turn to the theories of international trade which date back to David Ricardo in the mid-19th C. He showed that the law of comparative advantage holds that countries will specialize in those goods for which they have a cost advantage. Historically, this has depended in part on resources and geography. Economic theory was expanded by Heckscher and Ohlin, two early 20th Century Swedish economists who demonstrated that countries specialize in those goods for which they have the factors to produce, and in the early 1940s, by the American Paul Samuelson and the German economist Wolfgang Stolper who analyzed how this produces economic “winners” and “losers.”

International products also depend on economic institutions and systems that have taken years to develop, as stressed by institutional economics. Regional and national differences can thus be explained. Americans make better pharmaceuticals because their health care system charges so much that companies can afford the research costs. Canadians may make better snow shovels because consumers need them to survive cold, snowy winters, increasing demand. Japan makes better cameras because their culture may value filial piety and the need to record family activity. Germans may make better cars because their culture stresses engineering education. Italians may make better olive oil because most of the world’s olives grow in the Mediterranean, and the British, with their loquacious, chatty culture, make the best dry comedies. The question is if these cultural and institutional idiosyncrasies will diminish with the increased speed and communication of the globalized world.

As political-economists such as Rosser and Rosser (2004) point out, all nations’ economies can be classified differently into systems across many criteria, such as by: allocation, customs, forms of ownership, role of planning, types of incentives, income redistribution, social safety nets, and impact of ideology and politics. Whereas the “traditional economy” allocates wealth based on customs, such as India’s cast system, and results in many cultural products, perhaps seasonal, the “market economy” does so by supply and demand, as in the West. Finally, the “command economy” does so by choices made by powerful leaders, such as in ancient empires or modern dictatorships. Combinations exist, such as the planned-market economies, as in France and Japan. In Islamic nations, interest is forbidden, but allowed for some financial instruments, such as in Saudi Arabia, while China under Confucianism encourages a greater good for the society, and more saving (Rosser and Rosser 2004). Scandinavian countries have developed strong social safety nets, due to the historical importance of unions, and corporatism that links businesses with employees

(Rosser and Rosser 2004). All of these factors affect the types of firms that develop and the products they offer.

According to Michael Storper (2009), the best resource, the combination of political and economic systems, unique to every country, is the “whip,” which determines the rules for competition which increase “incentives to firms in different places to become more efficient over time” (Storper 2009, 1). Other economic factors are also important, such as economies of scale, which give cost advantages to larger firms. The timing of entry is important such that early entrants are better able to satisfy demand, and sequencing, in which large firms or firms late to enter the market may be hurt by worse terms of trade already globally established. Storper writes that it “depends on the intricate socioeconomic processes at the local level and appropriate broader institutional enabling conditions...” (Storper 2009, 2). These conditions include institutions, of which Gregory and Stuart (2004) indicate five, such as: structure and organization of economic decision making, rules for the market, property rights, incentives for setting goals, and the role of government (Gregory and Stuart 2004). These institutions, whether in societies or large companies, take hold after long periods of time, and discourage risk-taking in new types of products, which are left to entrepreneurs.

Political-economies have affected business in Japan, for example, where several hundred years of peaceful rule under the Tokugawa shogunate led to improvements in business, infrastructure, and literacy (Rosser and Rosser 2004, 148). Asian companies have strong links to each other and to banks, collectively called keiretsus, which unfortunately are a hidden barrier to trade to outsiders (Rosser and Rosser 2004, 151). Japan also benefits from strong supply chains, and the kanban system, allowing for faster logistics and reduced unnecessary inventory. So, for years, Japan was able to make high quality products (Rosser and Rosser 2004, 156). In the case of Germany, one of today’s strongest economies, not only is the nation good at engineering roads and cars because of its education system, but also because of a corresponding apprenticeship program. Its business managers have more engineering degrees and experience than any other place in the world, dating since the founding of now Daimler-Chrysler in the 1880s (Rosser and Rosser 2004, 232, 235-236).

The products of the British people could, moreover, be due to the dreary weather. I visited London a few years back, and observed their way with words - the intricate nursery rhymes that parents read to children, mostly originating in England, with hidden meanings dating back to English history. Some point to their economic lack of entrepreneurship, excessive strikes, lack of technology usage, and not joining the euro. Economist Mancur Olson (1982) blames it on a lack of a historical, “general shakeup,” but this is questionable because of England’s Civil War and Glorious Revolution which established rights, and the wars following the colonial period (Rosser and Rosser 2004, 576-578).

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According to Irwin M. Stelzer (2007, 1) "Great Britain is in a great time zone to do business, and uses the language of business, English, with similar terminology to that of Wall Street. It also has an attractive, lenient regulatory system, low taxes, and 'an appealing quality of life,' such that some want it to replace New York as a financial center." Despite these attractions, stock market efficiency is slower, and it has a worse deposit insurance system, eccentric mayors, a poor exchange rate, expensive taxes, and more crime. The British culture though is seen as best at assimilating culture from Muslim immigrants (Pauly 2004).

It is interesting to consider the cultural differences between Europe, Asia, and Latin America, but the contributions different factors play are unclear, although one could try running a linear regression. The types of capitalism practiced in parts of the world also differ, which affect firm size and types of products. While the American system is essentially *laissez faire* and is referred to as the Anglo-Saxon model of capitalism, the European model involves more state regulation and legal codes, and the Asian model is based on high capital formation directed by the state (Gregory and Stuart 2004). Interestingly, communist writer German economist Karl Marx never called for the isolation of an economy from trade. Nevertheless, Joseph Stalin's original model called for autarky, which lasted longer than other features of the Soviet economy, because the Russians were afraid that trade would "undermine the effectiveness of central planning" (Rosser and Rosser 2004, 276-277).

While some look towards the small companies in other countries as a reason for differentiated products, it is commonly estimated that some 70% of all U.S. businesses are small, mom-and-pop shops. However, U.S. businesses are taxed too high, since small firms are often taxed at individual taxation rates, and for larger firms there is essentially a high, flat tax. Some economists have speculated that with the global slowdown there will be a race to reduce rates, or to relocate. Japan's tax rates were at 39.5%, but they recently reduced taxes by 5% (Barrasso 2012). The U.S. rate is also triple that of Ireland, and 10 points higher than Austria, Denmark, or China, forcing many U.S. subsidiaries overseas (Kocieniewski 2011). Since 2000, 30 developed countries have cut their business tax rates (Barrasso 2012, 1). In the U.S, the revered Burger King headquarters recently departed to Canada.

The decision making of multinational companies as to where to locate and supply products are complex, and involve ownership of assets, particularly: whether to share intellectual property assets, whether or not to license technology to foreign firms, and whether to use advantages of countries in raw materials or cheaper labor. Finally, there is question of where consumers are located so as to lessen transportation costs. Internationally, five of the twenty largest world multinational firms are located in France or Germany, four are in the United States, also the largest four, and three are in Great Britain. Multinationals operating in the home country, but seeking to do business in a

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host country, may find many unaccustomed regulations. National defense, telecommunications, and transportation tend to be the most regulated industries (Sawyer and Sprinkle 2009).

Raleigh Barlowe (1993) provides additional suggestions for national specialization, which some scholars call "location theory," which dates back to the 19th Century. He attempts to explain why new industries develop in certain locations. Worker training, skills, education, and motivation vary considerably across countries, and one of the largest implications is that of transportation costs, with the producer trying to minimize them as much as possible. However, national pride may cause citizens of one country to support the production of traditional products, like the "Buy American" campaign. (Barlowe 1993) Places like Silicon Valley developed as a location for technically minded individuals to form networks with each other, writes Fukuyama (Fukuyama 1999). Location theory also examines why, after taking-off, additional expansion of the sector is limited to the original location and its surrounding areas. Sectors begin to form in places because the unit costs are lower, which Harrison et al. (1996) call static agglomeration. They define dynamic agglomeration as not costs but technological learning across places (Harrison et al. 1996).

Returning to Storper, he continues by arguing against Ricardian economics, writing instead that, "differentiated socioeconomic forms of organization and practice are key to creation" (Storper 2009, 4). Anthropologists have long debated if variations in economic organizations are simply an indication of different resource endowments and factor costs, which led to various power structures and incentives. Or, are people in different places not the same in terms of rationality, goal seeking, learning, and cognition? While mainstream economists favor the first, contemporary institutional economics go beyond. They hold that different initial conditions create scarcities and dilemmas amongst consumers and producers, resulting in unique institutional rules. A third view holds that institutions will obviously be dissimilar, but that practice and history will result in different types of capitalism, firms, and production systems (Storper 2009). Storper adds that what is missing from the arguments is what the layperson calls 'culture,' and that this is why the Japanese have a knack for quality control, the Italians such a passion for design. Storper's argument is that "we still have [difficulty] deciphering such differences," and that "this is the 'dark matter' of regional economies," (Storper 2009), meaning it is currently unexplained.

Storper provides several examples to highlight his points. First, he discusses the differences between owning a restaurant in the U.S. versus France. The supply chains for ingredients are different, much harder to obtain fresh, low cost products in the U.S. than in France, which affects the supply curve. Second, there are lower barriers to entry into the restaurant market in the U.S., and third, U.S. restaurants are pushed by urban locations and profit-making to become larger. Fourth, there is a difference of culture in the kitchen, with the U.S. having

a more pronounced hierarchy. Finally, there are differences in innovation, with most new ideas coming from the creativity of the less-stressed France, Italy, and Spain. These reasons together give France an epicurean competitive advantage (Storper 2009).

Storper proffers additional examples, such as the differences between Hollywood and Bollywood, between Milan and New York fashion, and Danish versus French or American food processing. The first two probably depend on taste and preferences, the last probably on historical food laws. In another example, he suggests that the apparel industry ranges from geographically divided chains of mass production to local, specialized firms, the former trying to copy the latter. In the car industry, products are more comparable than in fashion, but Detroit manufacturers, even with today's technology spill-over effects, have less innovation than Tokyo or Germany. Each use marketing information, and frame business problems, differently (Storper 2009). Finally, "winner-take-all" systems such as Silicon Valley or Hollywood create products distinct with "locally constructed techniques that are rooted in the local system as a whole" (Storper 2009, 10).

Intra-industry trade, the trade between countries of similar products, is increasingly dramatically worldwide, defying traditional theory that countries should specialize in producing certain goods. The best explanations offered are that certain countries have developed, over time, specific tastes and preferences which open the door for niche markets of slightly differentiated products. Other explanations are that of "brands," that is, the use of prestigious names on products by marketers to make it appear as if the products are more unique than they seem, first written about by economists Joan Robinson and John Kenneth Galbraith.

Marketing can be used to convince consumers to buy goods because the country of the business has a reputation for it; consider bottled water companies in France. Mass marketing has been used in the U.S. since the 1950s to "generate" demand; simply image the drawings of soup cans by artist Andy Warhol. A third explanation is that of "product life cycles," that new products are altered by countries as they move from being the hottest fads, to the standard products in the industry, to the "has-beens," while theories by Paul Krugman suggest that economies of scale may result in firms producing at lower cost and charging less. "Overlapping demand" theory suggests that countries will trade similar products if consumers are similar across countries (Sawyer and Sprinkle 2009). Mishra (2014) calls this "hyper commodification" of products. A final idea I offer is that of risk, that diversification reduces cyclicity or shocks disturbing supply. Some nations, because of their political-economic system, may choose to block trade, while others follow an open policy, all which have an effect upon businesses. In short, culture affects supply and trade, because it affects whether or not products supplied meet consumers' demand. Under Say's Law, supply comes first, but this is a "chicken-versus-the-egg" type question. In advanced

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economies, consumers have the option of rejecting products that do not conform to their tastes, and they can therefore save their money instead for future spending.

The Demand of Culturally Diverse Goods and the Future

It is hard to say what will happen with globalization and product homogenization in the future, but one could envision the world as an unending salad bar, made of numerous components. In economics, demand depends on many factors, such as income, relationships to other goods, shocks to the economy, and tastes and preferences, while quantity demanded depends mostly on price. Taste and preferences can never fully be explained, whether they depend on nature or nurture, except that economists assume consumers are rational. However, one would think it depends strongly on culture. We can look to the U.S. as an example, starting in the early 1800s, when some authors see the beginning of globalization due to the convergence of commodity good prices from improvements in rail and steam. America, because of immigration, was becoming what has been known as the “melting pot.” In recent years, many scholars have instead called America a “garden salad.” Individual, national, and ethnic differences still remain and are somewhat pronounced, in pockets of differences, which include products.

A study of U.S. history reminds one of the independent tenement sections that arose in the 19th C. in cities like New York, Chicago, and elsewhere. After arriving at Ellis Island, immigrants would organize such that some neighborhoods would be Italian, others Irish, some German, with the similar religious groups tending to interact, reside nearby, marry within themselves, and combine ideas to form new products. Consider the recent Disney movie, “The Hundred-Foot Journey” about the blending of cultural goods. The same activity is now taking place in numerous countries and across the world, resulting in changed tastes and preferences. On the other hand, fragments of culture continue to last for years - in fact, America has acquired a philosophical background from the Greeks, religions from the mid-East, science and math from China and 7th C. Islam, and languages from Europe. The Greeks prided themselves on the ability to “synthesize” or amalgamate culture (Cohen 2002).

Hari Prasad Bhattarai quotes sociologist Van den Berge as providing a definition of such garden salads as, “societies wherein several distinct social and/or cultural groups coexist ... and share a common economic system that makes them interdependent, yet maintain a greater or lesser degree of autonomy and a set of discrete institutional structures in other spheres of social life” (Bhattarai 2004). According to Bhattarai, this is one way out of four ways in which a society can deal with culture, and this can be applied to goods as well: amalgamation, in which various cultures are transfixed into an entirely new culture, assimilation, in which minority segments adopt the culture of the majority, segregation, the complete separation and discrimination of cultures,

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and pluralism, the garden salad, also referred to by some writers as a “rainbow” of different colors, or a “fruit salad.” Consumers can choose their culture and demand products just like at a salad bar. In classical economics, inputs are considered fixed, and it is only in more modern economics that assumptions are relaxed to allow for changes in tastes and preferences (Salvatore 1996).

Products are being affected by globalization in various ways. Just as globalization affects income inequalities both within and in-between countries (Williamson 2002), so too does globalization affect cultural change. Within countries, it is leading to a larger number of products available, and thus cultural diversity. But in-between nations, cultural diversity is lessening. What is the net effect? Cowen (2002) writes that niche markets demanding specific tastes and preferences, or vegetables in the salad, are emerging globally, evidenced by the newly found popular demand for “Indonesian gamelan music to African cinema” and “Haitian naïve painting to Tuvan throat singing” (Cowen 2002). Culture is simultaneously being either “dumbed down” into pop, Hollywood culture, or lifted up, by “yuppies” and youth who tend towards the international.

Sociologist Peter L. Berger (1997) identifies four main types of global market cultures: the Davos culture, one of business people which is named after a resort in Switzerland, followed by the Faculty Club International that consists mostly of academics. Third is the widely popular culture of McWorld, followed by the Evangelical Protestant Movement, which is growing in Latin America and the far East, and is the most “aggressive” in spreading its views (Bergen 1997). Still, writes Cowen (2002), music today is “healthier and more diverse” than it has ever been, as some countries like Egypt and Brazil are producing more than 70% of their own music. Films are being produced around the globe, and the Netherlands, with under 10 million people, is writing the world’s best fiction novels (Cowen 2002).

Psychology theory shows that consumer demand decisions are made not always rationally, but with imperfect information and with local points of reference, or “anchors,” a process called “situationalism” (Storper 2009, 7). Also of importance are comparison and emulation, and how “actors” process information. Storper calls all of this “context,” defined as “the division of labor and the networks in which the actor finds herself or himself, ... , hence her or his ‘input’ structure of cues and reference points” (Storper 2009, 8). According to Mishra (2014), consumption depends on “bandwagon” and “snob” effects, termed “conspicuous consumption” by 1920’s economist Thorstein Veblen (Mishra 2014).

The majority of the world’s products are western, since the West grew faster and earlier from trading and political relationships, technology, resources, and freer markets (Storper 2009). The changes to culture will have, as in all globalization, winners and losers. The largest winner, says economist Niall Ferguson, will be what he calls “chimerica,” a United States-Chinese linkage. This is not to forget India, with its English language services. Already we see this with

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the “Americanization” or “McDonaldization” of the world, with America marketing its style of products abroad, while accepting the entrance of novel foreign products. Consequently, to help preserve foreign cultures, the U.S. must be careful not to become a cultural imperialist, causing cultural loss. America and Europe have had a negative history of colonization, dating back to the Romans’ attempt to civilize the “barbarians,” the Middle-Age Crusades, and 19th C. Christian missionaries. Now, as the world’s leader, the U.S. must be respectful and not repeat past mistakes. The first question is whether we should as a global society try to stop cultural loss (Steger 2009, 48)?

My answer here, which might come as a surprise to some, is “yes” to a large extent. Product and cultural separateness, or diversity, creates many benefits, a veritable diversification of strengths, and a better society. Contrary to the common wisdom saying in China that “the nail that stands out gets hammered in,” one needs to look only at the experience of the Pilgrims to see that from America’s inception, the diversity of cultures has its benefits. In their second winter or the 17th Century, the Pilgrims used help from Native Americans in farming corn, and this exchange of culture allowed them to survive. But, if we choose to prevent the globalization of cultural goods, we should do so in a way that does not impede globalization’s strengths, and thus refine it, not end it. Borders have traditionally protected culture and goods, but since this is changing, we need to look at ways to increase pluralism, to understand cultural diversity. To stop the harms of cultural globalization some look to France. Write Gordon and Meunier (2001), it is a nation of people, since the 1930s Popular Front, which turned to its government frequently, earning it the sobriquet the “dirigiste state” (Gordon and Meunier 2001, 15-18).

France, a largely socialist country, spends over three billion government dollars per year trying to preserve its cultural products, from food, to film, to language, through government agencies that enlist over 12,000 employees (Cowen 2002), fearing globalization will erode sovereignty. In 1959, Charles de Gaulle created the Ministry of Culture, and cultural centers called the Maisons de la Culture. In 1967, Jean-Jacques Servan-Schreiber wrote, “The American Challenge,” a staple for the French people. Since the G-8 trade rounds of the early 1990s, France has sought protection for its cultural goods, and then domestically, in 1996, passed the “Toubon Law,” requiring that 40% of all radio broadcasts be in French. Food ranks next in importance, and the country has fought the European Union strongly to obtain barriers to genetically modified beef (Gordon and Meunier 2001). Still, the terrorist attacks of January 2015 on the Charlie Hebdo cartoon newspaper highlights the need to better integrate those of the Muslim faith into Europe, while in the United States, the Islamic population is much smaller.

Language, which is associated with stature, class, and influence, has been regulated by the French going back to 1635 and the establishment of the French Academy. The 1975 Bas-Lauriol law required all advertising to be in French, and

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in 1998, resulted in 8,000 linguistic inspections, 658 warnings, 255 cases, and 124 completed prosecutions (Gordon and Meunier 2001). In other nations, Canada's government requires its radio stations to dedicate a certain portion of the music to naturally born artists such as Celine Dion. Meanwhile, South Korea, Spain and Brazil have requirements regarding content for their film industries, which Spain and France also do so for their television industry. India at a certain time prohibited the sale of Coke (Cowen 2002). But, countries must still respect cultural diversity. In the United States, "hip" language introduced over the last several generations, along with technology which favors shorter messages, is diluting the quality of speech and writing. And, America's culture has become dangerous through production of violent video games, which cannot be regulated due to free speech and commerce laws, the Supreme Court ruled. This is one of the reasons why the U.S. has so much gun violence, and has led to a so-called detached young men crisis, veritably an epidemic, which the U.S. is now culturally exporting to the world. The United States culture places less control on violence and a greater emphasis on minimizing sexuality graphically, as compared with European states.

Other nations are using various means to pause economic globalization, the rapid spread of goods and ideas to all ends of the world. Writes van Elteren (2003), "Although political and cultural elites in some countries have imposed regulations and subsidies to protect local cultural content, the major thrust is clearly in the opposite direction," a direction of openness (van Elteren 2003, 175). Developing countries suffer from low wages and poor working conditions, which Western activists protest. So, they will have to turn towards citizens, or non-governmental organizations. Since the Seattle riots in 1999, dozens of world agencies have formed to deal with development issues, including cultural ones. Talks at the Kyoto Protocol in 1997, the 2002 Johannesburg World Summit, and the 2007 UN Bali Climate Summit, tried to address environmental issues, which affect quality and work conditions. In 2001, the World Social Forum was formed; as of 2008, there exist 150 civil society organizations associated with it, among them: trade unions, think tanks, agricultural groups, indigenous peoples' assemblies, financial watch-dog groups, religious groups, and human rights organizations (Steger 2009, 46, 125-30).

Increasing awareness of racism and ethnocentrism and a need for greater multicultural understanding will be required to address global culture. However, the garden salad world will be able to maintain its differences in products. Even Hopper denies that there will be a future global culture in the full sense of the word. Cowen quotes Englishman John Grey calling it a product of the utopian Enlightenment, a dream of "a single worldwide civilization in which the varied traditions and cultures of the past were superseded by a new, universal community founded in reason" (Cowen 2012). Today, we want a world that is not bland and uniform, but flourishing in its uniqueness. Mid-1800s economist

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John Stuart Mill briefly mused about the importance of diversity, writing about improving our “arts or practices” and “points of character” (Carden 2008).

Contrary to many opinions, this one does not see a complete homogenization of culture or products, and instead portend a garden salad of diverse, cultural goods. One can talk to visitors to South Korea or Vietnam, who encounter high-rise offices businesses and restaurants like McDonald’s, instead of rice paddies, to see that global culture changes. “Glocalization” may be products’ future. Volkman quotes Larsson (2001) as saying: “In the Philippines you can order a McSpaghetti, in Thailand a pork burger with chili and basil, in India a Maharaja MacMutton burger, in Japan a teriyaki burger, in Norway a salmon burger, in Uruguay an (sic) egg burger” (Volkman 2014, 6). However, culture by its definition is constantly changing, that is its nature; it has been throughout history. And, it does not appear that a complete world culture “for all,” is developing. Jocelyne Cesari (2002) supports this idea of a garden salad, writing what the world is witnessing is “neither a complete disaggregation of existing social systems nor a complete integration of social systems into a single form, homogeneous and coherent” (Cesari 2002).

In conclusion, why Germans make better beer, Mexicans better silver jewelry, Iraq better rugs, or China better textiles depends not only on comparative advantages, but on historical, economic, cultural, and political systems, consisting of many kinds of institutions, that affect businesses. This is not to stereotype, but to offer prime examples. It would be more surprising if countries around the world produced exactly the same products with the same quality, timelessly. In fact, it seems almost rational that they should be different, but, with globalization, products are becoming similar, but not to the extent that one can label them identical under a global culture. While the Chinese leader Mao Tse-Tung may have been correct that we should let a thousands flowers bloom, we need also to respect past cultures, such as in entertainment like film and literature, or lose a sense of cohesive national identity.

According to Mishra (2014), the future of globalization may have either positive or negative results, both laid out by Benjamin R. Barber, and warned about by Kirkpatrick Sale in 1995 and R. Cronk in 1996 as undermining traditional values and causing corporate-determined product selection. But, globalization will depend on governments, international organizations, and masses of citizens. Volkman writes, “‘market forces’ cannot determine or compete with culture, since culture entirely determines the relevant market values” (Volkman, 4).

The neo-liberalism of the 1990s and 2000s, which emphasized free trade at all costs, has been replaced by a Post-Washington Consensus that centers around social issues, such as environmental impact upon the quality of goods. Writes Cowen, “It’s impossible to deny that globalization will bring the demise of some precious and irreplaceable small cultures, and for that reason we should hope [it] does not enjoy total triumph” (Cowen 2002), which it will not. He refers

back to Austrian Joseph Schumpeter's "creative destruction" theory of new technology replacing old ones, but says we "hope for the creativity without the destruction" (Cowen 2002). Globalization is a product of people, and therefore it and its effects are not inevitable. Hopefully, nations will be able to work independently and together to preserve cultural nuances, which they will be able to, so that the globalized world will consist of a peace-abiding society, which uses cultural awareness to reduce clashes of ethnic intolerance, and with pockets of individualism, just like a garden salad.

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