

**MODELS OF ETHICS: MORAL PHILOSOPHY AS  
SEARCH FOR RULES FOR SOCIAL  
COLLABORATION<sup>1</sup>**

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It is not in the least obvious how moral philosophy may be formulated. Neither is its formulation a matter of indifference, since different formulations lead to different results. The formulation of moral philosophy is determined by the subject matter assigned to it, or else by the starting point, or again by the claims regarding the type of knowledge to be pursued. The theme (or *subiectum*, or subject matter) is constituted by the thing or reality (material object) which is being studied, and by the conceptual definition (formal object) that specifies that particular reality. If the theme has been established, the study proceeds differently according to different starting points, that is to say, according to those presuppositions or assumptions which are taken for granted from the very beginning and which remain so throughout the course of the research. On the theme and the assumptions depends the type of knowledge which one wants to pursue, which may be more or less precise in its conclusions, more or less compelling in its arguments, more or less simplifying as regards the variety of principles on which the arguments are based. Different formulations of moral philosophy give rise to *different models of ethics*.

However it is not at all obvious whether one should even ask how moral philosophy may be formulated: at least, this rarely happens in the discussion among moralists who support different models of ethics. A discussion that does

justice to an adversary should not simply consider his philosophical theses in and for themselves; it must also try to understand how he might have reached such conclusions: that is, it must reconstruct the process that begins from the *status quaestionis* which he has inherited from his sources and from the practical, moral and political problems which confront him; it takes into account the conceptual resources that he found at his disposal or that he constructed; it arrives at the theses proposed by him, which in turn open up new problems for his successors. The moral philosopher must therefore know the process and the network of reasoning which gives rise to a tradition of moral research and to a model of ethics.

Usually philosophers tend to a philosophical rather than a historical reading of the thought of their interlocutors. Not that they are ignorant of the history of philosophy; but when they have to discuss philosophically the philosophical positions taken in the course of history, they consider these as interlocutors in a debate that is purely argumentative, in which history does not really count.

Moral philosophers are not exempt from this tendency to abstract from history, even when they maintain that morality is inevitably marked by historicity. Because moral philosophy develops in response to urgent practical problems of the period in which the philosopher lives, and because it has the programmatic intention of guiding behaviour in some way, moral philosophers do not have time to spend on the investigation of the historical background of the model of ethics that they follow, and of other competing models. In this they are like those who go too close to a statue in order to observe it better. Not knowing their own genealogy, they are in ignorance of their own identity: they confront practical problems without being aware of the reasons for which they have been led to formulate them in certain terms rather than others; they discuss rival positions without understanding the

reasons for which they have been formulated. And of course, it is not only moral philosophers who are unfamiliar with the historical context of their discipline, for the same is true also of moral theologians of every confession.

For the purpose of identifying different models of ethics, let me proceed instead in a way which, following A. MacIntyre,<sup>2</sup> I shall call the *narrative* mode. I intend to reconstruct briefly the process of reasoning that led to the formation of different traditions of research, each of which promotes a particular model of ethics.

Proceeding towards this historical reconstruction of the principal models of ethics, I shall base myself on the following criteria:

a) The reconstruction concerns only moral philosophy as a specific philosophical discipline: only in this case, in fact, does the problem of formulation arise.

b) From among the many models of moral philosophy, I shall choose those which can be considered as the main ones by reason of their historical influence and their presence in the contemporary debate. For every model, we can find in history a tradition which gives rise to a series of different variations that belong to the same species. I shall confine myself to a consideration mainly of those that gave rise to a new conception in moral research, making only passing reference to the derivative variations.

c) I shall investigate the models of ethics exclusively from the point of their formulation.

Following these criteria, five different models of ethics can be found in the history of moral thought. Aristotle inaugurated ethics as a specific philosophical discipline,

formulating it as the *search for the good life to be lived*, as the search therefore for the virtues for living well. This model of ethics has a long and surprising history, one that comes down to our own days, with the multiplication of neo-Aristotelian proposals in moral and political philosophy. The most singular and salient event in this history was the appropriation of Aristotelian ethics by St. Thomas Aquinas: he accepted the Aristotelian formulation, but at the same time carried out profound transformations required both by his theology and by his hylemorphic anthropology. The Thomistic version of this first model of ethics also had its own singular history: his innovative and original formulation was eclipsed by a different model of ethics, and it is only in the last few years that it is being slowly rediscovered.

The model of ethics which eclipsed and distorted Thomist ethics was the work of Christian theology itself, in which ethics was formulated as *the search for the moral law to be observed*. Having developed during the twelfth and thirteenth centuries, it received its characteristic traits first through the work of John Duns Scotus and William of Ockham, and then through the work of Francis Suarez.

The work of Suarez had an enormous historical influence: on the one hand it left its mark on subsequent moral theology and neo-scholastic moral philosophy; on the other hand it inspired subsequent moral philosophy, both directly, thanks to the diffusion of the works of Suarez in the European Universities, and indirectly, through the work of the Suarez scholar Hugo Grotius. But from Grotius onwards, the theological ethics of law underwent a progressive secularisation, which resulted in the emergence of three new and typically modern models of ethics, as well as a secularised ethics of the moral law that ranges from the doctrine of natural law to Kant.

From the doctrine of natural law there developed first, through the work of Hobbes, an ethics formulated as *a search*

*for rules for social collaboration*; this is today widespread in many versions, from the contractualist to the conventionalist to the ethics of discourse. Subsequently, through the work of Hume, there emerged a model of ethics conceived in terms of a *naturalistic explanation of human behaviour*; rediscovered in the last few decades, this model is being proposed and renewed by a growing number of moral philosophers. Finally, the doctrine of natural law also gave rise first to theological utilitarianism, then to a secularised utilitarianism, and finally to the various contemporary forms of consequentialism; all these ethics can be considered as variants of the same original model of ethics, conceived as a *science for the production of a good state of affairs*.

I shall now proceed to a historical reconstruction of the *model of ethics formulated as search for rules for social collaboration*.<sup>3</sup>

## **1. The Hobbesian Model**

(1) I have mentioned that the secularising transformation of the theological morality of law resulted in different new models of ethics. One of these, and the first in order of time, was the modification of moral philosophy into a search for laws for social collaboration.

This formulation of moral philosophy was first conceived and exposed by Thomas Hobbes (1588-1679) in *De cive*, published anonymously in Paris in 1642, republished with additions in Amsterdam in 1647, translated into English by Hobbes himself and published in London in 1651 under the title *Philosophical Rudiments Concerning Government and Society*. The new moral philosophy was brought out in a complete and definitive form by Hobbes in his *Leviathan, ore the Matter, Forme, and Power of a Commonwealth, Ecclesiasticall and Civill*, published in London in 1651.

Neglected for centuries, it is only recently that this model of moral philosophy has been taken up anew and developed with different variations. It forms part of the different proposals for the reconstruction of ethics that have been proposed since the nineteen-fifties, in order to overcome the crisis of ethics caused by new practical problems raised by contemporary social life.

At the basis and origin of the new formulation there was an anti-Aristotelian revision of practical rationality by Hobbes. Dominated by the prestige of mathematical and geometrical rationality and of the new mechanistic science of Galileo, Hobbes conceived of science as the knowledge of one who, having control over certain causes, knows the laws according to which these causes produce determinate effects; such a person can therefore foresee the effects with absolute certainty and precision and can produce these effects in the same way an object is produced.<sup>4</sup> While science foresees and provides for the future, Aristotelian prudence according to Hobbes yields only an uncertain knowledge and is turned to the past, because it is based only on observations of experience.<sup>5</sup> Consequently Aristotelian morality based on prudence is not true science. The new moral science instead must be constructed as knowledge of the causes and the passions which give rise to human behaviour, and of the laws according to which certain effects can be infallibly produced in human behaviour from those causes.<sup>6</sup>

This new concept of practical rationality was used by Hobbes to explain the concept of moral law that had become central in moral theology, and that Hobbes had inherited from a twofold source: from Calvinistic theology and from the philosophy of Grotius.

Protestant theology had broken with the preceding moral tradition, effecting a complete separation of moral action

from justice or rectitude of the soul *coram Deo* (in the presence of God). Consequently it began to understand moral law no longer as that which prescribes what is necessary for the rectitude of the soul *coram Deo*, but as that which maintains order in society. Moral science was thus becoming the science of the satisfaction of human needs in a just and peaceful society.

Grotius in his turn took up this Protestant concept of moral law and interpreted it as a natural law accessible to reason, based on the principle of *appetitus societatis*, and valid even independently of God.

Hobbes was thus inheriting a concept of natural moral law as the law that regulates the life of people in society. As already for Grotius, so also for Hobbes recourse to natural law had to help in the solution of the typically modern practical problem; this was no longer the Aristotelian problem of how to live the good and noble life in the context of the *polis*; it was instead the problem of how to prevent politico-religious wars between rival groups. Hobbes in fact radicalised the problem, describing a state of nature in which there is only the war of all against all; the solution should therefore be sought in rules or laws that would ensure the collaboration of all with all, for the sake of peace and security of all and for mutual advantage.

The source of these laws could no longer be for Hobbes the search for the highest good, which he in fact regarded as the cause of the conflict. Nor could he have recourse, given his mechanistic conception of the world, to a normative *telos* in order to explain the moral law. In this way the interest in the perfection of individual and common life came to be excluded by moral science, which instead became exclusively the science of social collaboration.

In keeping with his concept of moral science, Hobbes explained the natural law on the basis of a consideration of

human beings as they are: a theatre of conflicting passions. These passions contain not only the causes of the conflict – the desire for self-preservation, for self-affirmation, for acquisition, for domination – but also the causes of his solution: the fear of death.

(2) At this point Hobbes brings in reason, which functions as the calculator of efficiency at the service of the desire for self-assertion and the fear of being killed. From the conjunction of these two desires, reason deduces that self-assertion can succeed only through collaboration, and proceeds to lay down the rules of collaboration (Hobbes formulates nineteen of these), which are also laws of nature.

Although Hobbes speaks of the laws of nature, he is well aware that these are not laws in the true sense, because they are not sanctioned by the will of someone who has the power of rewarding those who observe them and punishing those who transgress them. They are rather “conclusions, or theorems concerning what conduceth to the conservation and defence of themselves”.<sup>7</sup>

In requiring the intervention of the will of a sovereign for the constitution of law in the true and proper sense, Hobbes reveals himself as an inheritor of the then predominant voluntaristic conception of law upheld by Ockhamism and Calvinism. But in identifying the content of natural law as a sum of theorems of reason, he was pushing to the extreme the rationalistic conception of law inherited from Grotius and was identifying it with the laws of nature discovered by the new mechanistic science. In this way, natural law ceased to be a moral law valid by reason of an ultimate end that was true and dutiful, that is to say, the union of human creatures with God to whom it ordains them, and therefore a law that is obligatory in itself in front of human freedom. Natural law was becoming instead a kind of mathematical law, conceived in a necessary way by reason, on the basis of the desire for self-assertion and

the fear of death. Considered in this way however, the natural law is obligatory according to Hobbes only *in the internal forum and not in the external forum*.<sup>8</sup> The interior obligation or the obligation of conscience is explained by Hobbes in terms of a sort of logical coherence.<sup>9</sup> Since the laws of nature are theorems of reason for self-preservation, and not true and proper laws, they are obligatory in so far as they do not contradict one's desire for self-preservation. We are obliged to *desire* that the laws of nature be observed, but we are not obliged to observe them even when their observation is injurious to self-preservation. The mistake is equivalent to mathematical absurdity: the latter consists in contradicting one's own premise, the former in contradicting one's own preceding will.

Explained thus, the natural law is not really the moral law. What Hobbes considers as moral law in the true and proper sense is arrived at, according to Hobbes himself, only through a contract. In fact, the first two laws of nature indicate, as a means to peace, a contract which confers a sovereign with the power to lay down laws on what is just or unjust, and to sanction with punishments both the laws issued by him and the laws of nature themselves. Only thus can we obtain the moral law in the true sense, identical to and coextensive with the civil law, which, thanks to the sanctions, obliges also *in the external forum*. The same laws of nature, when sanctioned by the omnipotence of God, become laws of the natural kingdom of God: in this way, Hobbes tries to give an account of the Calvinistic theology of divine law.

With the figure of the sovereign legislator there appears the proper place of practical reason and of the moral science of Hobbes. It is in fact the sovereign who determines the laws which make human actions effectively predictable; it is he who possesses the knowledge which produces morally good actions, that is, those actions required for social collaboration and for peaceful coexistence. Individual human beings are not,

according to Hobbes, the true and proper authors of their own actions. Hobbes in fact on the one hand explains deliberation in terms of a conflict of appetites which is resolved through the prevailing of the stronger appetite.<sup>10</sup> On the other hand he understands reason as a calculator of efficiency and introduces among the factors of the calculus the moral-civil law about which we have been speaking. Action does not therefore derive from a free choice of which the subject is a free author, both as to the exercise (the act of choosing) and the specifying description (the object chosen); it is instead the necessary result of the passion which is found to prevail thanks to the rational calculus. Moral science is not therefore a property of the individual, but a property of the sovereign legislator alone. Moral philosophy is no longer built from the point of view of the first person but from that of the third person, namely the legislator.

The object of the new science of morals has become 'morality' in the typically modern sense of the term. In the version of Hobbes, morality is an institution or convention established by rational calculators in order to improve the human condition to the advantage of all through collaboration according to the rules of justice. From this convention and its laws are defined right and wrong, moral good and moral evil.

## **2. The Contemporary Revival of the Hobbesian Model**

(3) In the course of the seventeenth and eighteenth centuries, the ethico-political proposal of Hobbes remained extraneous and isolated with regard to the other dominant philosophies. It found consideration and acceptance but also was subjected to correction in the works of Rousseau. For the rest, very little notice was taken of it in the historiography of philosophy, apart from the fact that it became the object of lively polemics and inexorable criticism.

Only in the second half of the nineteenth century, first through the work of French historiographers of philosophy and then through the decisive monograph of F. Tönnies,<sup>11</sup> there was a revival of interest in the philosophy of Hobbes, mostly in the field of historical and philological studies. But exclusive attention to the ethico-political thought of Hobbes began only in the nineteen-fifties, mainly as a result of the influential monograph of L. Strauss, who saw in the political philosophy of Hobbes an opposition to the political philosophy based on natural right which he was trying to revive.<sup>12</sup> From then on studies on the ethico-political philosophy of Hobbes have flourished, in two parallel and connected directions: historical interpretation and philosophical revival.

Here we are interested in the philosophical revival, thanks to which there has arisen a real tradition of moral research which takes up Hobbes' line of thinking and presents it in different ways, modifying it in response to new philosophical situations and new practical problems.

The philosophical revival of the Hobbesian model of ethics is motivated by the possibility that this model offers of reintroducing the normative rationality of moral judgements while maintaining the subjectivity of values. In the fifties of the twentieth century, the emotivism of A.J. Ayer and C.L. Stevenson, which interpreted moral judgements as expressions of emotions, suppressed not only the objectivity of values but also the rationality of moral judgements. Then there was the type of rationality proposed by R.M. Hare with his prescriptive proposal: this also was insufficient, given that it was purely formal and neutral from a normative point of view, being merely the exigency of reasoning coherently with those principles which one has chosen to regard as universal prescriptions.

The new way was being prepared when in 1950 S.E. Toulmin came out with an influential book. Toulmin tried to make place for reason in ethics by elaborating a theory of

good reasons. Good reasons, according to him, were those which were in keeping with the function of ethics; and the function of ethics was that of regulating feelings and behaviours in such a way as to render compatible in the best possible manner the achievement of the ends and desires of each one.<sup>13</sup>

The proposal of Toulmin was taken up, corrected and developed in keeping with Hobbes' conception of ethics by his student K. Baier, who redrafted his 1958 dissertation at Oxford under the direction of Toulmin.<sup>14</sup> This work became a turning point for a great part of contemporary moral research and for the revival of the Hobbesian model of moral philosophy as a valid interlocutor in the contemporary debate, and as a proposal capable of meeting present-day ethical problems, both theoretical and practical. Baier defined the moral point of view as that which belongs to rules that are of advantage to all and that can be approved of by impartial and rational judges, namely, those who are capable of identifying their own best interests.

In the footsteps of Baier, the Hobbesian model of ethics was taken up by numerous others in different ways, bringing in modifications that discarded theses peculiar to Hobbes while still maintaining the basic conception, according to which morality was understood as a convention or set of rules for collaboration to the advantage of all and in the interest of all.

These variations differ in their way of explaining the rationality of conventional rules for collaboration on the basis of three criteria: a) the description of the human condition in the absence of collaboration; b) the conception of rational decision-makers; c) the procedure adopted for determining and justifying rules in a way that they might be approved by rational decision-makers.

Four versions of the Hobbesian model of ethics can be identified: 1) Some authors consider morality as a socially

sanctioned convention in view of collaboration and for avoiding certain evils of the human condition; 2) D. Gauthier considers morality as a sum of rules, obtained by means of negotiation, which restrict the search for one's own interest to the greatest advantage of each, taking for granted the natural inequality among negotiators; 3) J. Rawls proposes a public ethics based on principles of justice chosen by rational decision-makers in certain conditions in view of collaboration, taking for granted the equality of the decision-makers; 4) J. Habermas proposes a minimal ethics of collaboration, based on norms agreed to by rational decision-makers in an appropriate situation of argumentative discourse.

We shall speak briefly about each of these four contemporary Hobbesian versions of ethics.

(4) There are different variants of the first version. B. Gert, who considers Hobbes as the best classical moral philosopher and also acknowledges his debt to K. Baier, proposes, in view of obtaining the greatest possible consensus, a minimal morality consisting of ten rules, which each rational decision-maker is willing to uphold publicly as rules that all must observe towards all. These are all rules which prohibit the infliction of various evils towards others, given that for Gert the rational decision-maker is above all one who wants to avoid suffering certain evils. Here at the basis of morality there is no longer the good to be done, but the evil to be avoided. The rational decision-maker publicly upholds also the punishment of those who violate these rules. The observance of the moral rules in turn calls for the pursuit of moral ideals and the education of the moral virtues which correspond to the moral rules. In this model of ethics, it becomes necessary to distinguish moral ideals and virtues from personal ideals and virtues: the search for a better life now enters under this category; it no longer constitutes the principal theme of moral philosophy.<sup>15</sup>

G.J. Warnock explicitly refers to Hobbes in order to define morality on the basis of the task that he attributes to it: to improve, or at least not to worsen, the human condition from the point of view of the satisfaction of the natural needs and of the desires of human beings. The human condition can worsen due to the lack of resources, information, rationality and sympathy. Morality contributes by compensating for the lack of sympathy and for the damaging effects of such a lack, not so much through moral rules, since every case ought to be judged in itself, but through the moral virtues. In order to improve the human condition, it is not enough to have greater resources and information, nor even co-operation or a system of coercions; we need also “good dispositions – that is, some readiness on occasion voluntarily to do desirable things which not all human beings are just naturally disposed to do anyway, and similarly not to do damaging things”.<sup>16</sup>

These good dispositions are the moral virtues, which emend the limits of sympathy. They are four: the disposition to abstain from actions which cause harm; the disposition to help; the disposition to the fairness which does not discriminate; the disposition to truthfulness and loyalty. Morality thus understood does not give any answer to the question ‘How should we live?’ For Warnock this is a question without meaning; if at all it has a meaning (that is: what goals must be realised in the course of one’s life?), there is no answer and neither can morality give it one, since morality does not establish ends, but rather the limits within which to pursue any end. The theme of morality is neither the good life, nor happiness, nor the character according to which to form ourselves.<sup>17</sup>

Another variation of the first version of the Hobbesian model of ethics is proposed by G. Harman, who maintains that morality is a set of conventional principles that are valid within diverse human groups, geared towards social utility and sanctioned by social constraints. Such principles are based

upon good reasons that are constituted by the ends shared by the persons who form the group. These ends are not reducible exclusively to one's own interests, but presuppose that persons are motivated by respect for other persons: precisely such a motivation gives rise to moral conventions, explains them and justifies them.<sup>18</sup>

In the footsteps of Hobbes and G.J. Warnock, J.L. Mackie also looks to the social function for giving meaning to moral judgements, given that otherwise they are without meaning: they claim in fact to refer to objective values, which instead cannot be objective. The major concern of Mackie, and one which has attracted the most discussion, is precisely his criticism of the objectivity of values. His explanation of morality instead does not add anything new to that of G.J. Warnock. For Mackie as for Warnock, morality is a set of rules for improving the human condition, rendering possible cooperation among egoists and regulating their competition. Morality, understood in this strict sense, is geared towards morality in the wider sense; the objective of the latter is the good life, a life in which each one engages in those activities that he or she finds desirable. Because of this, it is in one's own interest to be disposed to the truthfulness and loyalty that are required for collaboration and that are in contrast to the limits of sympathy.<sup>19</sup>

Explicitly and substantially Hobbesian is also the explanation of morality based on cooperation proposed by R.E. Ewin: morality as the set of rules and virtues required for collaboration. Nevertheless, when compared to the peculiarly Hobbesian model of ethics and the variations of this model considered so far, Ewin brings in modifications and innovations. Cooperation itself, the central theme of ethics, is not called for in function of the advantage of each, it is not geared to the pursuit of each one's interest. Instead, it is absolutely required in order that the life we lead be specifically human; in the absence of collaboration, we would not live merely in a state

of nature, but rather in a subhuman condition. The collaboration that allows us to live as human beings certainly calls for various moral rules, as Hobbes insists; but Ewin limits the role of rules and upholds the primacy of virtues, defined as dispositions to realise the exigencies of collaboration. The chief among these exigencies, and among the respective virtues, is justice, which consists in proper distribution of the benefits and of the duties of collaboration. In singular affinity with B. Gert, Ewin also conceives of justice in function of the evil to be avoided: justice is realised when no one suffers unjustified privations in reference to diverse relevant characteristics (need, work, merit). It is justice that gives origin and foundation to practical rationality: moral reasons are reasons based on justice and are logically prior to and independent of the desires that each one is found to have. Justice is the principal virtue, absolutely necessary if there is to be collaboration and not exploitation and oppression; it constitutes the criterion for the virtuousness of the other virtues (the Hobbesian laws of nature), virtues that are required for rendering collaboration more efficient and the human way of living more desirable. Some of these are: prudence, understood as concern for one's own interests within the sphere of what is allowed by rights; benevolence, fidelity, interest in the happiness of others, the intelligence that discerns the action that is appropriate to the virtues and that does not violate justice.<sup>20</sup>

The extent to which it has become obvious to consider morality as a convention called for by collaboration and fixed in practices and institutions defined by rules, is revealed by a work by J.D. Wallace, which examines certain virtues and vices precisely in the light of this type of moral philosophy. Despite the intention to situate itself within the Aristotelian tradition, this study betrays a Hobbesian influence in its definition of the specifically human good "as a social life constituted by conventions, rather than as an activity in conformity with the *logos*".<sup>21</sup>

All these variants of Hobbesian ethics, themselves integrated into different varieties of contractualism, about which we shall shortly say something, are brought together in B. Brülisauer's systematic study of morality as convention. Brülisauer criticises and rejects various ethical theories proposed in the twentieth century, and upholds the thesis that "morality is a system of principles and corresponding dispositions, which are for the advantage of each one, as long as each one acts in conformity with them. However the conformity of all to these principles and the diffused efficacy of the corresponding dispositions has the effect that some persons will act to their own disadvantage".<sup>22</sup>

(5) Two other contemporary versions of the Hobbesian model ethics distinguish themselves by the fact that they make explicit recourse to the contractual procedure for determining and justifying morality, which is always considered as a set of rules for the sake of collaboration. But the procedure, in the respective versions of J. Rawls and D. Gauthier, gives opposite results: in the version of Rawls it gives rules of justice based on the moral equality of persons who have the same dignity and are worthy of equal respect and consideration; in the version of Gauthier the contractual procedure gives rules of justice which ensure advantage to all, but on the basis of the different contractual power at the disposal of each when entering into agreement. In the first case the result is a morality of liberal equality; in the second case, it is a libertarian morality in which the stronger one has the greater advantage by right. A similar opposition of results is due to the fact that in the two versions, the contractual procedure performs different functions, begins from different initial positions, and presupposes different conceptions of the acting person.

The version of Gauthier is the most sophisticated one ever elaborated in the Hobbesian tradition; after having dedicated a study to the analysis of the logic of the *Leviathan*, Gauthier takes up on his own this logic, modifying it according

to the recent economic theory of rational choice.<sup>23</sup>

Gauthier intends to justify moral rules “on the firm basis of a weak and widely accepted conception of practical rationality”.<sup>24</sup> He makes explicit reference to Hobbes, Harman and Mackie in order to maintain that moral values are not objective, as people presume, but only subjective preferences: in general, value is “a measure of preference”; “it is created or determined through preference”; “it is a product of our affections”.<sup>25</sup>

Consequently persons do not have an objectively equal moral status, which must intervene to define the contractual situation. Instead “a person is conceived as an independent centre of activity, which activity is made use of for directing his abilities and his resources for the realisation of his interests”.<sup>26</sup> Thus we have the weak, purely instrumental concept of practical rationality: the rational is that which maximises the satisfaction of one’s own interests. Reason does not evaluate ends; “the domain of reason is not particular preferences, but rather the manner in which they are realised and their mutual relations”.<sup>27</sup>

Each one therefore, as a rational agent, pursues the maximum satisfaction of his own preferences with the power that he possesses. For purely economic goods, this is obtained through the simple free market, without the necessity of moral rules. In the free market there is neither just nor unjust, even if one harms another. However this perfectly rational situation does not succeed when it is a question of goods that exist necessarily in common and that have necessarily interdependent uses which give rise to economic ‘externalities’ that are not completely controllable merely by means of the free market. In such a situation it is more advantageous for me not to harm others, as long as all the others abstain from harming me. At this point it becomes mutually advantageous to stipulate a convention. Instrumental and maximising

rationality gives rise to the moral artifice.

One enters into negotiation with one's own unequal contractual powers. The fruits of the negotiation are the conventional rules of justice, that is, of a "rational disposition to cooperative behaviour".<sup>28</sup> Thanks to the observance of these rules, each one suffers the minimum loss with respect to his initial demand and derives the maximum benefit possible through collaboration, which is always greater than the benefit that he would obtain if cooperation were to fail.

These agreed-upon rules are the moral rules, that is, rational 'restrictions' in the pursuit of one's preferences, restrictions 'rationally' decided upon on the basis of premises that are not moral. The moral rules thus agreed upon do not necessarily coincide with the moral rules recognised by common sense. On the contrary: since the 'justice' obtained through these rules is the greater advantage of everyone proportionate to the initial inequality in the starting point and in contractual power, common sense could judge that this 'justice' is unjust.

But if libertarian morality is 'rational', then no duty is to be accepted unless it brings benefit. The one who has greater contractual power has 'justly' greater advantage. "If the reader is tempted to object to some part of this conception on the grounds that it goes against his moral intuitions, he should ask himself what weight such an objection can have, given that morality belongs to the field of rational choice".<sup>29</sup>

### **3. The Neo-contractualist Version of J. Rawls**

(6) Since 1971 the theory of justice elaborated by J. Rawls has been catalysing a great part of the discussion and research among the lovers of moral and political philosophy. It has given rise to a new version of what I have been calling

the Hobbesian model of ethics, a version that is widespread, even though it has itself branched out into numerous variants. *A Theory of Justice* has crowned twenty years of study and research that began in 1950 with the philosophical dissertation at Princeton University. In the twenty years following the publication of *A Theory of Justice*, Rawls has, in answer to different criticisms, modified and corrected various aspects of his theory, always however maintaining the same essential conception, which is what interests us here.<sup>30</sup>

Like the other versions of the Hobbesian model of ethics, that of Rawls also proposes itself as an alternative to utilitarianism, which was the dominant model of ethics in the nineteen-fifties and nineteen-sixties in the English speaking areas. This latter is still a partner in the present-day debate, but is modifying itself in an effort to answer to the criticisms and demands made by the theories of justice. Really speaking, the theory of Rawls does not derive directly from Hobbes; rather, as Rawls himself indicates,<sup>31</sup> it derives from the tradition of the social contract of Locke, Rousseau and Kant. However Rawls transforms the theory of contract from a political into a moral theory; in this way it re-enters the Hobbesian tradition, thanks to the mediation of K. Baier, of G. Harman, and of the “presentation of the contract view as primarily an ethical theory” by G.R. Grice.<sup>32</sup>

Rawls, however, deviates from the principal direction followed in the Hobbesian tradition inasmuch as he does not ground morality on an effective agreement, as is done by D. Gauthier; rather, he uses the contract as “a useful way of studying ethical theories and of setting forth their underlying assumptions”.<sup>33</sup> The contract becomes merely one more logical device, a ‘constructionist’ method, for clarifying, explaining, developing and applying the common intuitions regarding justice, or better – as Rawls has explained after *A Theory of Justice* – the common intuitions of the citizens of the present-day Western liberal and democratic societies. The effective

foundation of morality is no longer the contract, but precisely the common intuitions regarding justice. According to these, justice is indeed the mutual advantage of collaboration, not however on the basis of different powers in negotiation, but rather on the basis of a moral equality of all human beings, to whom, because they are ends in themselves, is owed equal respect and consideration.

The contractual artifice built on this basis is able to explain which principles of justice and which of their applications each one is obliged to accept, and why these must be accepted as implications of common intuitions. The object of the original agreement become “the principles that free and rational persons concerned to further their own interests would accept in an initial position of equality as defining the fundamental terms of their association.”<sup>34</sup> Rawls gives the name ‘justice as fairness’ to this way of regarding the principles of justice.<sup>35</sup>

(7) The contractual artifice consists in showing that each one, in his capacity as rational agent, placed in a certain original situation, conveniently described in accord with the common intuitions, would rationally choose certain principles of justice as fairness; these would be the fundamental principles of a public morality applied to the fundamental institutions of society.

We shall briefly explain the individual elements of the contractual artifice.

1) *The rational agents.* The manner of conceiving the agents who have to agree in their choice of the principles of justice is decisive, since it furnishes the premises on which is based the reasoning that concludes in the choice of determinate principles. Now if such premises are to be shared, they have to be vague.<sup>36</sup> It is presupposed therefore that “the parties are moral persons, rational individuals with a coherent system of

ends and a capacity for a sense of justice.”<sup>37</sup>

The concept of rationality that is adopted is crucial. Rawls states that “[t]he concept of rationality invoked here, with the exception of one essential feature, is the standard one familiar in social theory. Thus in the usual way, a rational person is thought to have a coherent set of preferences between the options open to him. He ranks these options according to how well they further his purposes; he follows the plan which will satisfy more of his desires rather than less, and which has the greater chance of being successfully executed. The special assumption that I make is that a rational individual does not suffer from envy.”<sup>38</sup> Thanks to the lack of envy and hence thanks to mutual disinterestedness, “persons in the original position try to acknowledge principles which advance their system of ends as far as possible.”<sup>39</sup>

“[T]o think of the parties in the initial situation as rational and mutually disinterested ... does not mean that the parties are egoists, that is, individuals with only certain kinds of interests, say in wealth, prestige, and domination. But they are conceived as not taking an interest in one another’s interests. They are to presume that even their spiritual aims may be opposed, in the way that the aims of those of different religions may be opposed. Moreover, the concept of rationality must be interpreted as far as possible in the narrow sense, standard in economic theory, of taking the most effective means to given ends. ... [O]ne must try to avoid introducing into it any controversial ethical elements. The initial situation must be characterised by stipulations that are widely accepted.”<sup>40</sup>

This concept of rationality is logically linked to a fitting concept of the good, since rationality is in function of the good to be achieved. Now Rawls’ conception of moral research calls for the introduction of an appropriate distinction in the concept of the good: the distinction between the complete conception and the partial conception of the good. This

distinction expresses well the profound difference between the Aristotelian and the Hobbesian models of ethics. The former is conceived as the search for a better life for human persons; the latter leaves this search to the individual, and concentrates instead on the rules of collaboration between persons, each of whom pursues his or her own conception of good. In what concretely does the better life consist for human beings? This is a problem that is extraneous to the Hobbesian type of ethics. Instead it might interest itself on the one hand in a complete but purely formal understanding of the good, and on the other hand, in an incomplete understanding which indicates the indispensable goods that guide the reasoning of rational agents towards the choice of rules for collaboration.

As we have noted, rational agents in the initial situation want to pursue the good understood as a rational plan of life. Only this is relevant for the contract; not what is the concrete or substantive good which each one decides to pursue. The conception of the good as a rational plan of life is a complete but purely formal conception.

“The main idea is that a person’s good is determined by that what is for him the most rational long-term plan of life given reasonably favorable circumstances. A man is happy when he is more or less successful in the way of carrying out this plan. To put it briefly, the good is the satisfaction of rational desire. We are to suppose, then, that each individual has a rational plan of life drawn up subject to the conditions that confront him. This plan is designed to permit the harmonious satisfaction of his interests. It schedules activities so that various desires can be fulfilled without interference. It is arrived at by rejecting other plans that are either less likely to succeed or do not provide for such an inclusive attainment of aims. Given the alternatives available, a rational plan is one which cannot be improved upon; there is no other plan which, taking everything into account, would be preferable.”<sup>41</sup>

If the rational agents were to assume as premise their particular conceptions of the substantive good, they would not arrive at any accord regarding the principles of justice for collaboration, given that the particular conceptions differ from person to person.

“Now the assumption is that though men’s rational plans do have different final ends, they nevertheless all require for their execution certain primary goods, natural and social. Plans differ since individual abilities, circumstances and want differ; rational plans are adjusted to these contingencies. But whatever one’s system of ends, primary goods are necessary means. Greater intelligence, wealth and opportunity, for example, allow a person to achieve ends he could not rationally contemplate otherwise.”<sup>42</sup>

“[P]rimary goods ... are things which it is supposed a rational man wants whatever else he wants. Regardless of what an individual’s rational plans are in detail, it is assumed that there are various things which he would prefer more of rather than less. With more of these goods men can generally be assured of greater success in carrying out their intentions and in advancing their ends, whatever these ends may be. The primary social goods, to give them in broad categories, are rights and liberties, opportunities and powers, income and wealth.”<sup>43</sup>

In the original position, rational agents “know... that they prefer more rather than less primary goods. And this information is sufficient for them to know how to advance their interests in the initial situation”,<sup>44</sup> in view of the agreement on the principles of justice.

2) *The Original Position.* To obtain unanimous agreement in the choice of principles of justice, it is not enough that the parties are rational agents in the sense described above; it is also necessary that they be situated in an appropriate initial situation, which Rawls calls the original position. Anyone can place himself mentally at any time in such a position in order

to rediscover the principles of justice and their reasons, which ought to regulate the fundamental institutions of collaboration. The original position is determined, according to Rawls, in what he calls the reflective equilibrium regarding the common intuitions about justice, intuitions which find expression in our considered judgements, “those judgements in which our moral capacities are most likely to be displayed without distortion.”<sup>45</sup>

Thanks to the reflective equilibrium, starting from our considered convictions regarding justice, we are able to identify, through the logical device of the contract, those principles of justice that are in accordance with our considered convictions and that allow of extension, development and application. On the other hand we modify our considered judgements in order to harmonise them with the principles of the theory.<sup>46</sup>

Constructed according to the reflective equilibrium, the original position of Rawls differs radically from the pre-contractual situation of D. Gauthier. In fact, in order to be in accordance with our considered convictions regarding justice, the original position must contain an element that is totally absent from the pre-contractual situation of Gauthier, i.e. the consideration regarding the moral equality of rational agents in as much as they are ends in themselves, worthy of equal consideration and respect. Therefore in the original position there must intervene factors that are opposed to negotiation on the basis of the disparity of contractual powers of individuals, and that ensure such an impartiality in the choice of the principles of justice that the choice of one is the choice of all.

In order to ensure the required impartiality, Rawls introduces the so-called ‘veil of ignorance’; he presupposes that the parties are well-informed regarding the general facts of human life, moral psychology, the sciences, but are ignorant of their own individual particularities and historical

contingencies, since these are elements of inequality. “Thus there follows the very important consequence that the parties have no basis for bargaining in the usual sense. No one knows his situation in society nor his natural assets, and therefore no one is in a position to tailor principles to his advantage”; “The veil of ignorance makes possible a unanimous choice of a particular conception of justice”,<sup>47</sup> precisely justice as fairness.

3) *The object of rational choice.* The focal point of attention of rational agents who find themselves in the original position is “social cooperation among equals for mutual advantage”,<sup>48</sup> since “in justice as fairness society is interpreted as a cooperative venture for mutual advantage.”<sup>49</sup>

If in this way Rawls associates himself with the present-day versions of the Hobbesian model ethics (§ 4), in another way he distances himself from it. He sets up the initial situation “so that the principles that would be chosen, whatever they turn out to be, are acceptable from a moral point of view”,<sup>50</sup> and borrows from K. Baier the formal links which define what is morally right. But that which rational agents have to choose by unanimous agreement in the original position is not the whole set of moral rules (as in Hobbes) nor even the more fundamental among these (as in B. Gert), but rather only the principles of distributive justice, and that too only inasmuch as they define the fundamental institutions of social collaboration among equals. These principles will be fair simply by the fact of having been chosen according to pure procedural justice, which means exclusively by reason of the manner in which rational agents have proceeded to choose in the original position.<sup>51</sup> The agreement also regards certain principles for individuals, but these are totally in function of just institutions; that is, they are needed to support, respect and promote the just institutions.<sup>52</sup>

As for the formal links which define the moral rules, Rawls, following K. Baier, asks that the principles of the

morally right be: (a) general, that is, that they be formulated prescinding from the particularities proper to each one; (b) universal, that is “they must hold for everyone in virtue of their being moral persons”; (c) public, as required by the contractual viewpoint; (d) besides, they must impose an order on conflicting claims; (e) finally, they must be definitive: “the parties must consider the system of principles as the final court of appeal in practical reasoning”. “Taken together, then, these conditions on conceptions of right come to this: a conception of right is a set of principles, general in form and universal in application, that is to be publicly recognized as a final court of appeal for ordering the conflicting claims of moral persons”. This system of formal constraints regarding the concept of the just in the sense of morally right is valid “for the choice of all ethical principles and not only for those of justice.”<sup>53</sup> Hence Rawls remains within the sphere of present-day versions of Hobbesian ethics, even though he restricts himself only to the principles of distributive justice which regulate the essential institutions for social collaboration.

(8) The main reason why Rawls resorts to the contractual method and why he concentrates on the public morality of justice is expressed in *A Theory of Justice* in terms of a contrast between justice as fairness and utilitarianism. Rawls summarises this contrast by stating that according to justice as fairness, the just has priority over the good, while according to utilitarianism, the good understood as satisfaction of a rational desire has priority over the just.<sup>54</sup> Now one of the reasons for which priority is given to the just over the good is “that it is, in general, a good thing that individuals’ conceptions of their good should differ in significant ways, whereas this is not so for conceptions of right. In a well-ordered society citizens hold the same principles of right and they try to reach the same judgement in particular cases.”<sup>55</sup>

In subsequent writings, starting from 1985,<sup>56</sup> Rawls makes explicit another reason, more essential and more

pertinent, that remained merely implicit in *A Theory of Justice*. He is led to such explicitation in order to respond to the criticisms of some interlocutors, conventionally called communitarians,<sup>57</sup> who on the grounds that they have nothing to do with utilitarianism, object to Rawls that his mode of proceeding for determining the principles of justice as fairness presupposes rational agents who are fictitious. Real acting human subjects proceed to their choices on the basis of a complex and articulated conception of the good, in which they recognise themselves, according to which they understand themselves, and on the basis of which they form a community. Only on the basis of a shared and common conception of the good, is it possible to determine the criteria of justice, and of the different types of justice, according to the kind of goods to be distributed and according to different practical contexts.

Rawls replies to this observing that this priority of the conception of the good over the criteria of right does not exist in Western democratic societies, characterised by a pluralism in the conceptions of the good, which are in irreducible discord and even in insoluble conflict among themselves. This situation is typically modern; it is the contemporary version of that conflict between religious denominations which at the beginning of modern epoch led to a search for ways for a just and peaceful coexistence that was no longer based on a shared conception of the good. At this point the relationship of Rawls' public ethics of justice to the Hobbesian tradition of moral philosophy becomes clearly visible. Rawls' proposal is in fact thought of as an answer to a present-day practical problem that is similar to the practical problem that Hobbes tried to solve by developing his model of ethics. In both cases, moral philosophy is conceived of as a search for rules for collaboration between rational agents who are not originally constituted into communities on the basis of a shared conception of the good.

As we have seen however, Rawls distinguishes between

a complete conception and a partial conception of the good. In the original position rational agents choose, in a condition of equality assured by the veil of ignorance, the principles of justice as fairness, and they choose them precisely only on the basis of a partial conception of the good, which contains only the principal or primary goods, those goods “that it is rational to want ... whatever else is wanted, since they are in general necessary for the framing and the execution of a rational plan of life. The persons in the original position are assumed to accept this conception of the good, and therefore they take for granted that they desire greater liberty and opportunity, and more extensive means for achieving their ends.”<sup>58</sup>

The principles of justice that regulate the fair distribution of the burdens and benefits of collaboration, chosen on the basis of a foreseen and shared minimum conception of the good, have priority over the complete conception of the good, in the sense that they impose restrictions on the latter. Rational agents can reasonably choose a substantive conception of the good within the limits imposed by justice as fairness.<sup>59</sup>

It is true that for Rawls the principles of justice as fairness are not the whole of morality. Nevertheless in pluralistic democratic societies these practically constitute the only morality that can be shared. Hence Rawls studies moral development exclusively as the development of the sense of justice, and concerns himself with the motivation to justice.

He does this by having recourse to the complete conception of the good. Obviously, the determination of what is concretely the good, the good or better life for man, is beyond the tasks of this public ethics. Nonetheless Rawls finds a way of confronting the question about the good (according to the complete conception) from the point of view of the public ethics of justice.

He can define the good, according to the complete conception, as a rational plan of life and analyse the requisites of rationality for a plan of life. However he warns: “The definition of the good is purely formal. It simply states that a person’s good is determined by the rational plan of life that he would choose with deliberative rationality from the maximal class of plans. Although the notion of deliberative rationality and the principles of rational choice rely upon concepts of considerable complexity, we still cannot derive from the definition of rational plans alone what sort of ends these plans are likely to encourage.”<sup>60</sup>

Further Rawls can show that in a well-organised society, one which assures the good of persons according to the principles of justice as fairness, living according to this justice forms part of the good of each one. In this way he is able to establish that “justice as fairness and goodness as rationality are congruent.”<sup>61</sup>

(9) What is proposed by Rawls is a new version of the Hobbesian model of ethics, which, as we have observed, presents itself as a solution that is particularly appropriate to the practical problem typical of present-day pluralistic democratic societies: the problem of finding a public ethics for peaceful coexistence and advantageous collaboration between persons who pursue different conceptions of the good and of the good life. Because of this, Rawls’ version of ethics finds wide acceptance today, even if it is merely one of the many variants of contemporary liberal ethical theories. We bring together a group of these theories with the intention of finding an answer to the practical problem presented in terms described below.<sup>62</sup>

This group of theories is marked by: a) the belief that there is an irreducible and conflicting pluralism of values, which prevents the possibility of founding collaboration on a common conception of the good life; b) a scepticism regarding the

possibility of a rational resolution of the conflict between conceptions of the good; c) the reduction of ethics to a minimal public ethics, in order to reach which each ethics proposes its own procedure.

The very scepticism regarding the conception of human nature and the possibility of solving rationally questions regarding the ordering of goods and values for determining a concrete and normative model of the good life, undermines from the very beginning the possibility that this group of liberal ethical theories might solve rationally questions regarding the conflict of liberties and rights. After having criticised various liberal theories along this line, J. Gray comes to the conclusion that what can be saved are not the liberal theories, but rather the institutions and liberal practices in pluralist societies, always presupposing the scepticism about the possibility of solving rationally questions regarding values, only by taking from Hobbes and from his contemporary and follower Michael Oakeshott the procedure for resolving from time to time the ever-emerging conflicts. There is need to search for a precarious *modus vivendi* by means of an ever variable combination of argumentation, negotiation and equilibrium of forces and of powers.<sup>63</sup>

S.Hampshire comes to similar conclusions, without however going back to Hobbes, but rather developing in his own way the Aristotelian concept of deliberation. He disengages practical discussion in assembly from every dependence on prior conceptions of the highest good and of the virtues of the good life, since he too admits the irreducible and conflicting pluralism of values and of conceptions of the good. In these conditions the only alternative to domination and violence, which cause the supreme evils in the human condition, is the minimal procedural justice that consists in participating with fairness in deliberations of the assembly. This is the only minimal ethics that is absolutely universal for all human agents, because it is made possible by the universal

capacity for language and for argumentation. This ethics is based neither on conceptions of the good nor on substantial principles of justice derived from particular conceptions of the good. It is based exclusively on human needs that are stable and universal but minimal: the need for a bearable human life, without great evils such as violence, but lived in relationships marked by justice and benevolence. Deliberation conducted with fairness is the only way of managing conflicts; but it never reaches compromises that are complete, final and certain; nor is it exempt from strategic recourses to power and to force which cause evils, but which can be functional to the exercise of procedural justice. Against the neo-contractualism of Rawls, Hampshire concludes that “that to which we must aspire in society is not consensus, but rather conflicts that are ineliminable and acceptable, and rationally controlled hostilities, as the normal condition of humankind”.<sup>64</sup>

#### **4. The Ethics of Discourse Model**

(10) Just as *A Theory of Justice*, published in 1971, was beginning to attract the attention of an ever-widening group of interlocutors, in 1973 Karl-Otto Apel published his *Transformation der Philosophie*, in which he brought together several of his articles of the preceding years, and initiated a study, carried out in dialogue with Jürgen Habermas, which in the nineteen-seventies and nineteen-eighties would result in a new model of moral philosophy, named the ethics of discourse. This in its turn has attracted more and more scholarly attention, and from the nineteen-eighties has been stimulating discussions and studies in German, English, Italian, Spanish and French.

It might seem strange that we enter into a discussion of this model of ethics when dealing with the tradition of the Hobbesian kind. Not only do these authors appeal to Kant rather than to Hobbes, but also the ethics of discourse seems to be antithetical as a model to that of Hobbes. Still, I think it

is possible to show that the former, even though opposed to the peculiar ethics of Hobbes, nevertheless also manifests traits of a new version, the fourth one, of what I have been calling the Hobbesian conception or model of ethics. It is not for nothing that it has come to be characterised as an alternative to the proposal of Rawls; but it is an alternative which shares the same fundamental conception, which is what principally interests us here. We shall see how and why.

From the beginning of his philosophical studies, K.-O. Apel concentrated on the problems of language, highlighting the rhetorico-poetic function of language in the formation of the human being along the lines of the tradition of Italian humanism.<sup>65</sup> In the course of the sixties and seventies of the twentieth century, he developed this conception of language assimilating the semiotics of C.S. Peirce and the theory of linguistic acts of J.L. Austin and J.R. Searle. The two volumes of *Transformation der Philosophie*, bringing together nineteen contributions of the years 1955-1972, outline his proposal to transform Kantian transcendental philosophy into a pragmatic transcendental philosophy of language.<sup>66</sup> This consists in laying out clearly the transcendental conditions of possibility of the act of linguistic communication. It is precisely the *a priori* of the community of communication that allows Apel to discover a new possibility of practical rationality for a transcendental foundation of the correctness and validity of moral norms.<sup>67</sup>

Both Apel and Habermas propose the ethics of discourse as an alternative to the monopoly of scientific, technical, non-evaluative rationality in the social sciences; a monopoly that results in a pure 'creation' of values and in the impossibility of providing a justification and a rational criticism of norms. Linked to this goal, there is in both the intention of liberating human coexistence from the grip of domination and power, which is a result of the predominance of technical rationality, and of finding ways of emancipation in view of a coexistence among persons who are free and capable of understanding and consensus.

But Habermas, brought up in the Frankfurt School of the masters of Critical Theory, was concerned at first with the possibility of deepening the distinction between labour and interaction, along the lines of the Aristotelian distinction between *techne*, *poiesis* and *praxis*. It is only from the nineteen-seventies that, in order to take better account of interaction, he turned to the philosophy of linguistic acts and began an intense dialogue with Apel. The impressive result is first of all the elaboration of a theory of communicative action, and following from this, his own variant of the ethics of discourse.<sup>68</sup>

(11) The term ‘ethics of discourse’ signifies that this model of ethics consists of norms whose validity is the result of an appropriate act of linguistic communication which, when specified according to certain conditions, is called ‘discourse’. As for the moral norms that regulate social collaboration, the ethics of language furnishes a criticism or a justification that is purely procedural: it regards as valid the norms on the basis of which the participants in the discussion arrive at understanding and consensus. The capacity of the discourse to confer validity and correctness on the norms is based on the requirements of the discourse itself, on its conditions of possibility, which are brought to light by the formal pragmatic. This pragmatic is transcendental for Apel, insofar as it provides the norms with a foundation that is ultimate and absolutely incontrovertible. For Habermas it is, instead, a pragmatic that is barely universal, inasmuch as it brings out clearly the conditions that in fact are to be found in all the acts of discursive communication.

In any case the formal pragmatic highlights four claims advanced by the interlocutors in every act of discursive communication; these claims constitute the conditions of possibility of a meaningful discursive communication. Whoever involves himself seriously in an act of discursive communication puts forward certain claims in the act itself: (a) regarding the meaning or intelligibility of his statements; (b) regarding truth: he claims that what he says corresponds to the objective world;

(c) regarding veracity: he claims to state that which corresponds to his subjective world; (d) regarding correctness: he claims that his act corresponds to the rules of communication with the world of other people.

On these claims are based the conditions necessary for discursive communication to issue into a legitimate rational consensus. In order that everyone interested can enjoy an effective equality of opportunity for participating in the dialogue, there must be mutual recognition without constraints among all, insofar as they are autonomous rational subjects whose demands will be recognised if supported by valid arguments. In order that the dialogue might give valid results, it is necessary that it be a communicative process that is completely public, not dominated by political or economic powers. It should be public also as regards access: whoever is capable of language and of action and is potentially affected by the norms under discussion, must be able to participate in the discussion on an equal footing. Further, the participants must be capable of modifying the level of the conversation and to proceed to arguments that are ever more radical. Nothing should be excluded from the practical conversation: neither power, nor wealth, nor tradition nor authority.

Obviously no real conversation corresponds completely to these conditions which are contrafactual and which outline an ideal discursive situation, an ideal community of communication. Neither however are these conditions utopian, given that real conversations are meaningful only in the measure in which they satisfy these conditions.

The recourse to a real and actual conversation, conducted in a way that approaches these conditions, distinguishes the ethics of discourse from contractualism and from the Kantian recourse to the categorical imperative. The conversation in fact is not at all a contract where each one looks for the greatest advantage starting from an initial disparity

of contractual power. Neither does actual conversation function like the hypothetical contract in the original position proposed by Rawls: it is not in fact a viewpoint within which each one can place himself at any given moment in order to discern unilaterally the rules of justice to which to give one's rational consensus. Conversation is an effective and dialogical practice. This recourse to dialogue substitutes programmatically the Kantian test by means of the categorical imperative: it is no longer each individual judging unilaterally what maxim can be acceptable to all without contradiction; rather all the participants in the actual conversation agree rationally to the norms that thanks to the conversation are shown to be capable of satisfying the fundamental normative principle required by the ethics of discourse.

According to this principle, which Habermas calls the principle of universalisation, "every valid norm must satisfy the condition that the consequences and the secondary effects deriving (presumably) each time from its *universal* observance for that which regards the satisfaction of *every* individual, can be accepted by *all* the interested parties (and can be preferred to the consequences of the known alternative possibilities of regulation)".<sup>69</sup>

(12) It is this principle that reveals what I have called the Hobbesian structure of the ethics of discourse. In fact the principle is formulated by Habermas keeping in mind the fact that it has to be a moral principle. But for indicating the elements that distinguish the moral principles and define the moral point of view, Habermas refers explicitly to K. Baier and to B. Gert.<sup>70</sup> We have already seen (§ 3-4) that in these authors the Hobbesian formulation is operative, according to which what is moral are the public rules of collaboration, fruit of accord and of consensus on the basis of impartial considerations, to the advantage of the interests of everyone. What is specific to the ethics of discourse is not the conception of morality, which is in the Hobbesian tradition, but the

proposal regarding the rational procedure by means of which norms are justified.

For the rest, the practical problem itself, for responding to which the ethics of discourse is constructed, is of the Hobbesian type. This ethics of discourse in fact aims at the rules of collaboration which give liberation from relationships of power and of domination, and it is these which prevail in the Hobbesian state of nature. Further, once again in keeping with the Hobbesian formulation and with its present-day version in the work of Rawls, the procedure for arriving rationally at moral rules must not assume as a premise any particular conception of the good and of the good life. The ethics of discourse is thought of as a universal ethics compatible with the present-day diversity of the particular forms of life: “the principle of universalization functions like a knife, which cuts between ‘the good’ and ‘the just’, between evaluative assertions and assertions that are strictly normative”.<sup>71</sup>

Against this interpretation of the ethics of discourse as a model of ethics of the Hobbesian type, it could be objected that both Habermas and still more Apel refer explicitly to Kant with the intention, however, of substituting for the categorical imperative and for the transcendental subject that proceeds unilaterally to the convalidation of norms, a procedure that is even more purely formal and that aims at universal norms, but one that is based on intersubjectivity and on effective discursive communication.

To this objection we can reply that it was precisely the separation between the procedure for determining the norms of justice and the question of the highest good that was introduced by Hobbes, and that still Hobbes proposed a discursive and intersubjective procedure, even though embryonic, for the rational justification of moral rules. The modifications that Habermas and Apel bring to the Kantian procedure, transforming it from unilateral to dialogical, are

required precisely by the conception of the moral point of view adopted by Habermas, which is Hobbesian in origin with some Kantian correction. But, notwithstanding a certain formal resemblance, the Kantian conception of morality is irreducible to that of Hobbes. Kant still remains in the tradition of the ethics of the moral law, where the moral law, in its principles, is known to every one and is not at all the fruit of accord or of consensus.

It is true however that Kant lends himself to the modifications brought in by the ethics of discourse, precisely because he approves the separation between the just and the good and explains the moral law on the basis of rational criteria that are purely formal, prescinding from the question of the good, understood as satisfaction of the inclinations of empirical human nature. From here the step towards the definitive abandonment of the concept of moral law immanent in the conscience of each one is very short. It is enough to substitute the subject with the intersubjective dialogue, and we have an ethics that is considered suitable to the present-day practical situation as an programmatic alternative to the ethics of the moral law.

For the rest, with very few modifications to the Hobbesian conception, and even developing elements offered by Hobbes himself, it is possible to derive an ethics of discourse with claims that are less universalistic and more historical: an ethics for democratic societies. A similar procedure was proposed by R. Zimmermann, emphasising in passing Hobbes' reference to the ninth precept of the law of nature, according to which human beings *must consider themselves* equal by nature, even if nature has made them unequal. In this way it is easy to arrive at the ideal conditions of discourse that will then issue into moral norms.<sup>72</sup>

(13) In almost all its versions the Hobbesian model of ethics identifies morality with public rules for social

collaboration, obtained by means of convention or by the procedure of accord starting from an impartial consideration of the interests of every rational subject. It rejects as irrelevant for moral philosophy the question of the individual conduct of life, the conception of the good and of the good life. It highlights in the acting subjects only that which can provide premises for accord: it considers them as rational decision-makers, with different definitions of rationality according to the diverse versions, but tending to definitions that are purely formal, that evade the question regarding the prospective ends or rational goods to be pursued in behaviour.

### *Notes*

<sup>1</sup> The Italian original of this article was first published in *Salesianum* 57 (1995) 251-281. It was subsequently printed as section 3 of chapter 2 of G. Abbà, *Quale impostazione per la filosofia morale?* (Rome: LAS, 1996).

<sup>2</sup> The following works of A. MacIntyre are relevant for the present study: *A Short History of Ethics* (New York: MacMillan, 1966); *After Virtue: A Study in Moral Theory*, 2<sup>nd</sup> ed. (Notre Dame, IN: University of Notre Dame Press, 1984); *Whose Justice? Which Rationality?* (Notre Dame, IN: University of Notre Dame Press; London: Duckworth, 1988); *Three Rival Versions of Moral Inquiry: Encyclopaedia, Genealogy, and Tradition* (Notre Dame, IN: University of Notre Dame Press; London: Duckworth, 1990).

<sup>3</sup> In the larger study mentioned above (*Quale impostazione per la filosofia morale?*) I recount the historical background of all the five models of ethics that I have mentioned. This account in turn aims at discussing the question as to which is the best model for moral philosophy: in the discussion the five rival models of ethics take part as interlocutors.

<sup>4</sup> Cf. *Leviathan* chapter V (= Michael Oakeshott, ed. [Oxford: Basil Blackwell, 1960] 29).

<sup>5</sup> Cf. *Leviathan* chapter VIII (= Oakeshott, ed. 43-46).

<sup>6</sup> The opposition between Hobbesian practical rationality and that of Aristotle is explained well by Allen S. Hance, "Prudence and Providence: On Hobbes's Theory of Practical Reason," *Man and World* 24 (1991) 155-167.

<sup>7</sup> "These dictates of reason, men used to call by the name of laws, but improperly: for they are but conclusions, or theorems concerning what conduceth to the conservation and defence of themselves; whereas law, properly, is the word of him, that by right hath command over others. But yet if we consider the same theorems, as delivered in the word of God, that by right commandeth all things; then are they properly called laws": *Leviathan* chapter XV(= Oakeshott, ed. 104-105). "The law of nature, and the civil law, contain each other, and are of equal extent. For the laws of nature, which consist in equity, justice, gratitude, and other moral virtues on these depending, in the condition of mere nature, as I have said before in the end of the fifteenth chapter, are not properly laws, but qualities that dispose men to peace and obedience. When a commonwealth is once settled, then are they actually laws, and not before; as being then the commands of the commonwealth; and therefore also civil laws: for it is the sovereign power that obliges men to obey them": *ibid.* chapter XXVI (= Oakeshott, ed. 174).

<sup>8</sup> "The laws of nature oblige in *foro interno*; that is to say, they bind to a desire they should take place; but in *foro externo*; that is, to the putting them to act, not always." *Leviathan* chapter XVI (= Oakeshott, ed. 103).

<sup>9</sup> "So that *injury*, or *injustice*, in the controversies of the world, is somewhat like to that, which in the disputations of scholars is called *absurdity*. For as it is there called an absurdity, to contradict what one maintained in the beginning: so in the world, it is called injustice, and injury, voluntarily to undo that, which from the beginning he had voluntarily done." *Leviathan* chapter XIV (= Oakeshott, ed. 86).

<sup>10</sup> Cf. *Leviathan* chapter VI (= Oakeshott, ed. 37-38)

<sup>11</sup> Cf. Ferdinand Tönnies, *Hobbes: Leben und Lehre* (Stuttgart: Friedrich Frommans Verlag, 1896).

<sup>12</sup> Cf. Leo Strauss, *Political Philosophy of Hobbes: Its Basis and Genesis* (Oxford 1936).

<sup>13</sup> Cf. Stephen E. Toulmin, *An Examination of the Place of Reason in Ethics* (Cambridge: Cambridge University Press, 1950).

<sup>14</sup> Cf. Kurt Baier, *The Moral Point of View: A Rational Basis of Ethics*

(Ithaca, NY: Cornell University Press, 1958).

<sup>15</sup> Cf. Bernard Gert, *The Moral Rules: A New Rational Foundation for Morality* (New York: Harper and Row, 1966). Gert has developed and perfected his theory, responding to objections and alternative theories in successive editions, to the point of changing the title in the most recent edition: *Morality: A New Justification of the Moral Rules* (Oxford-New York: Oxford University Press, 1988).

<sup>16</sup> Cf. Geoffrey James Warnock, *The Object of Morality* (London: Methuen, 1971) 76.

<sup>17</sup> Cf. Warnock 89-91.

<sup>18</sup> Cf. Gilbert Harman, *The Nature of Morality: An Introduction to Ethics* (Oxford-New York: Oxford University Press, 1977).

<sup>19</sup> Cf. John Leslie Mackie, *Ethics: Inventing Right and Wrong* (Harmondsworth, Middlesex: Penguin Books, 1977).

<sup>20</sup> Cf. R.E. Ewin, *Cooperation and Human Values: A Study of Moral Reasoning* (Brighton, Sussex: The Harvester Press, 1981). Ewin has recently proposed an interpretation of the ethics of Hobbes in which he reevaluates the importance that Hobbes himself would give to the virtues of collaboration: *Virtues and Rights: The Moral Philosophy of Thomas Hobbes* (Boulder, CO: Westview Press, 1991).

<sup>21</sup> J.D. Wallace, *Virtues and Vices* (Ithaca, NY-London: Cornell University Press, 1978) 37.

<sup>22</sup> Bruno Brülisauer, *Moral und Konvention: Darstellung und Kritik ethischer Theorien* (Frankfurt am Main: Athenaeum, 1988) 198.

<sup>23</sup> Cf. David Gauthier, *The Logic of Leviathan: The Moral and Political Theory of Thomas Hobbes* (Oxford: Clarendon Press, 1969); ID., *Morals by Agreement* (Oxford: Clarendon Press, 1986); ID., *Moral Dealing: Contract, Ethics, and Reason* (Ithaca, NY: Cornell University Press, 1990), which brings together together essays published between 1974 and 1985.

<sup>24</sup> Gauthier, *Morals* 17.

<sup>25</sup> Gauthier, *Morals* 46-47.

<sup>26</sup> Gauthier, *Morals* 8-9.

<sup>27</sup> Gauthier, *Morals* 25.

<sup>28</sup> Gauthier, *Morals* 113.

<sup>29</sup> Gauthier, *Morals* 269.

<sup>30</sup> Cf. John Rawls, *A Theory of Justice* (Cambridge, Mass.: The Belknap

Press of Harvard University Press, 1971). There followed translations into German (1975), Spanish (1979), Italian (1982), and French (1987). The most important subsequent studies of Rawls have been brought together in German translation: John Rawls, *Die Idee des politischen Liberalismus: Aufsätze 1978-1989*, ed. Wilifried Hinsch (Frankfurt am Main: Suhrkamp, 1992): on pp. 399-400 there may be found a bibliography of publications by J. Rawls. Subsequently the English edition of these studies was published: *Political Liberalism* (New York: Columbia University Press, 1993); Italian tr. *Liberalismo politico* (Milan: Edizioni di Comunità, 1994).

<sup>31</sup> Cf. Rawls, *A Theory* § 3; 11, note 4.

<sup>32</sup> Rawls, *A Theory* § 3; 11, note 4. Rawls refers to G.R. Grice, *The Grounds of Moral Judgement* (Cambridge: Cambridge University Press, 1967), who suggests a variant of the formulation of ethics as a convention for collaboration, about which I spoke in § 4.

<sup>33</sup> Rawls, *A Theory* § 3; 16.

<sup>34</sup> Rawls, *A Theory* § 3; 11.

<sup>35</sup> Rawls, *A Theory* § 3; 12.

<sup>36</sup> Rawls, *A Theory* § 4; 18.

<sup>37</sup> Rawls, *A Theory* § 50; 329.

<sup>38</sup> Rawls, *A Theory* § 25; 143.

<sup>39</sup> Rawls, *A Theory* § 25; 144.

<sup>40</sup> Rawls, *A Theory* § 3; 13-14.

<sup>41</sup> Rawls, *A Theory* § 15; 92-93.

<sup>42</sup> Rawls, *A Theory* § 15; 93.

<sup>43</sup> Rawls, *A Theory* § 15; 92.

<sup>44</sup> Rawls, *A Theory* § 15; 93.

<sup>45</sup> Rawls, *A Theory* § 9; 47.

<sup>46</sup> Rawls, *A Theory* § 4 and 9.

<sup>47</sup> Rawls, *A Theory* § 24; 139-140.

<sup>48</sup> Rawls, *A Theory* § 3; 14.

<sup>49</sup> Rawls, *A Theory* § 14; 84.

<sup>50</sup> Rawls, *A Theory* § 20; 120.

<sup>51</sup> Cf. Rawls, *A Theory* § 20; 120.

<sup>52</sup> Cf. Rawls, *A Theory* §§ 18-19.

<sup>53</sup> Rawls, *A Theory* § 23; 130.

<sup>54</sup> Cf. Rawls, *A Theory* § 68.

<sup>55</sup> Rawls, *A Theory* § 68; 448.

<sup>56</sup> Cf. "Justice as Fairness: Political not Metaphysical," *Philosophy and Public Affairs* **14** (1985) 223-251; "The Idea of an Overlapping Consensus," *Oxford Journal of Legal Studies* **7** (1987) 1-25; "The Priority of Right and Ideas of the Good," *Philosophy and Public Affairs* **17** (1988) 251-276; "The Domain of the Political and Overlapping Consensus," *New York Law Review* **64** (1989) 233-255.

<sup>57</sup> Cf. chiefly William A. Galston, *Justice and the Human Good* (Chicago-London: The University of Chicago Press, 1980); Alasdair MacIntyre, *After Virtue*; Michael J. Sandel, *Liberalism and the Limits of Justice* (Cambridge: Cambridge University Press, 1982); Michael Walzer, *Spheres of Justice: A Defense of Pluralism and Equality* (New York: Basic Books, 1983); Charles Taylor, *Human Agency and Language: Philosophical Papers*, 2 vols. (Cambridge: Cambridge University Press, 1985).

<sup>58</sup> Rawls, *A Theory* § 66; 433.

<sup>59</sup> "Once the principles of justice are derived, however, contract doctrine does establish some limits on the conception of the good. These limits follow from the priority of justice over efficiency and the priority of liberty over social and economic advantages.... [T]hese priorities mean that desires for things that are inherently unjust, or that cannot be satisfied except by the violation of just arrangements, have no weight." Rawls, *A Theory* §41; 260-261.

<sup>60</sup> Rawls, *A Theory* § 65; 424.

<sup>61</sup> Rawls, *A Theory* Chapter IX: The Good of Justice; 513.

<sup>62</sup> I refer especially to James Buchanan, *Limits of Liberty: Between Anarchy and Leviathan* (Chicago: University of Chicago Press, 1975); Bruce A. Ackerman, *Social Justice in the Liberal State* (New Haven-London: Yale University Press, 1980); Charles E. Larmore, *Patterns of Moral Complexity* (New York: Cambridge University Press, 1987); Loren E. Lomasky, *Persons, Rights, and the Moral Community* (New York: Oxford University Press, 1987); David Johnston, *The Idea of a Liberal Theory: A Critique and Reconstruction* (Princeton, NJ: Princeton University Press, 1994).

<sup>63</sup> Cf. John Gray, *Liberalisms: Essays in Political Philosophy* (London-New York: Routledge, 1989). The reference is to Michael Oakeshott, *Rationalism in Politics and Other Essays* (London: Methuen, 1974;

Indianapolis: Liberty, 1991).

<sup>64</sup> Stuart Hampshire, *Innocence and Experience* (Cambridge, MA: Harvard University Press, 1989) 189.

<sup>65</sup> Cf. Karl-Otto Apel, *Die Idee der Sprache in der Tradition des Humanismus von Dante bis Vico* (Bonn: Bauvier, 1963); Italian tr. *L'idea di lingua nella tradizione dell'umanesimo da Dante a Vico* (Bologna: Il Mulino, 1975).

<sup>66</sup> Cf. K.-O. Apel, *Transformation der Philosophie* (Frankfurt am Main: Suhrkamp, 1973); partial Italian tr. *Comunità e comunicazione* (Turin: Rosenberg & Sellier, 1977).

<sup>67</sup> Particularly relevant under this aspect are: K.-O. Apel, "Zum Problem einer rationalen Begründung der Ethik im Zeitalter der Wissenschaft," ed. M. Riedel, *Rehabilitierung der praktischen Philosophie*, vol. II (Freiburg: Rombach, 1974) 13-32; "Sprechakttheorie und transzendente Sprachpragmatik zur Frage ethischer Normen," ed. K.-O. Apel, *Sprachpragmatik und Philosophie* (Frankfurt am Main: Suhrkamp, 1976) 10-173; "Grenzen der Diskursethik? Versuch einer Zwischenbilanz," *Zeitschrift für Philosophische Forschung* **40** (1986) 3-32; *Diskurs und Verantwortung: Das Problem des Übergangs zur postkonventionellen Moral* (Frankfurt am Main, Suhrkamp 1988).

<sup>68</sup> Cf. especially: Jürgen Habermas, *Theorie des kommunikativen Handelns* (Frankfurt am Main: Suhrkamp, 1981); Italian tr. *Teoria dell'agire comunicativo* (Bologna: Il Mulino, 1986); *Moralbewusstsein und kommunikatives Handeln* (Frankfurt am Main: Suhrkamp, 1983); Italian tr. *Etica del discorso* (Bari: Laterza, 1985), esp. the third essay; *Erläuterungen zur Diskursethik* (Frankfurt am Main: Suhrkamp, 1991).

<sup>69</sup> Habermas, *Etica del discorso* 74. In Apel's formulation: "Act only on the basis of that maxim that puts you in the condition of either participating in the discursive foundation of those norms, whose consequences can give rise to the consensus of all those interested, or of deciding, alone or in collaboration with others, in the spirit of the possible results of the ideal practical discourse": cf. "L'etica della responsabilità nell'area della scienza," *Il Mulino* **34** (1985) 47-73; the quote is on p. 60.

<sup>70</sup> Cf. Habermas, *Etica del discorso* 73.

<sup>71</sup> Habermas, *Etica del discorso* 115.

<sup>72</sup> Cf. Rolf Zimmermann, "Equality, Political Order and Ethics: Hobbes

and the Systematics of Democratic Rationality,” ed. David Rasmussen, *Universalism vs. Communitarianism: Contemporary Debates in Ethics* (Cambridge, MA-London: The MIT Press, 1990) 109-128. The text of Hobbes is from *Leviathan* Chapter XV (= Oakeshott, ed. 100-101): “If nature therefore have made men equal, that equality is to be acknowledged; or if nature have made men unequal; yet because men think themselves equal, will not enter into conditions of peace, but upon equal terms, such equality must be admitted. And therefore for the ninth law of nature, I put this, that every man acknowledge another for his equal by nature”.

