

# Liberalism and the Conflict of Restraint

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## Abstract

John Rawls' *A Theory of Justice* is an extremely important work of contemporary liberalism that sets up the theoretical framework for a defense of liberal social contract deontology. Michael Sandel, a communitarian, tries to criticize Rawls on the grounds that his liberal political theory will produce alienated and dislocated individuals without clear or thickly-constituted identities. Rawls replies to the communitarian critique by differentiating between the institutional (public) and non-institutional (moral) identities, but fails to address the ethical/metaphysical considerations that are needed to fully account for the communitarian critique. Rawls tries to place 'communitarian values' within the non-institutional sphere, but since the institutional and non-institutional collapse into the same person who is at once citizen and moral individual, he creates what I call the 'conflict of restraint.' I will explore how existentialism and Simone de Beauvoir's ethics of freedom help to advance the liberal argument against Sandel's criticisms while also affirming the criticism of Rawls' presumed impartiality. Beauvoir's perspective is analogous to *A Theory of Justice* in some ways. Beauvoir and Rawls share a similar conception of self and a similar dualism between universal and particular. If seen as a Rawlsian moral identity, Beauvoir's existentialist ethics helps to solve the conflict of restraint by bringing into line otherwise conflicting interests. The existentialist perspective at once shows the potential to bring forward a new way of thinking about justice and addresses the communitarian critique by providing an ethical/metaphysical paradigm to ground liberal claims of goodness.

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## Introduction

Restraint prevents action. It can be a beautiful thing to restrain fleeting impulses for the sake of other people and the greater good, but imagine a self-restraint that prevents someone from doing good. Imagine someone who knows what is good but nevertheless restrains themselves from doing good for the sake of a theoretical principle. This person should probably be told to change their principles to be in better accordance with what is known to be good, or they should change their very idea of goodness to be in line with their principles. Either way, the use of restraint to prevent what is understood as an absolute good seems to be a bad use of restraint. Liberalism is often accused of bad restraint because the political theory proposes a difficult distinction between the institutional (public) and non-institutional (moral) self. The distinction in these terms is attributable to John Rawls, who uses it to defend against the communitarian critique, but he inadvertently creates the conflict of restraint which pits the institutional and non-institutional selves against one another. In the case of such a conflict, Rawls argues, the right has priority over the good, but Michael Sandel's criticisms put pressure on the priority of the right. Sandel argues that the liberal conception of self is shallow, that rights have a moral grounding, and that even justice itself is sometimes a moral vice. In order to respond to these criticisms, Rawls needs the support of a substantial ethical/metaphysical theory that he is not prepared to provide. Looking to Simone de Beauvoir's existentialist ethic, however, provides an interesting response to Sandel. Beauvoir's ethics recognizes the same concept of self that is active in Rawls' theory and affirms a universal/particular dichotomy that resembles the institutional/non-institutional one. If Existentialism is taken up as a non-institutional identity to accompany a liberal institutional identity, then the conflict of restraint can finally be resolved, and the communitarians will need to contend with Beauvoir's scathing attacks against the archetype of the "serious man."

In terms of contemporary issues, there should be no doubt whether the liberal-communitarian discourses are worthy of examination. Today, issues of public concern merit a reevaluation of the underlying principles guiding society. As in ages past, issues of identity, meaning, and toleration are dragged into the public consciousness. A reckoning with the issues surrounding normative structural principles is upon us. Liberalism is the normative ideology of our time manifest through civic institutions and cultural mores, an inherited feature of European Enlightenment thought. Enshrined in the constitution, liberal ideology has served as the backdrop for myriad political and cultural battles throughout American history. Today's particular circumstances, with increased attention being paid to issues of free speech, freedom of the press, religious liberty, and privacy rights, bring our attention to the sustained need for strong liberal institutions. Other issues like those of identity politics, global multiculturalism, and mass society beckon us to overrule the enlightenment liberal principles in order to sustain the values of the communities and associations that weave the fabric of our lives. If ever there was a time to illuminate the liberal-communitarian debate: the time is now. How can we understand American liberalism in today's context, and how can we counteract the more alienating facets of the normative structural ideology?

In answering this question, section 1 will explain Rawls' Archimedean point – the original position – and the principles of justice as well as the thin and thick theories of the good. I will explain how Rawls' political justice is defined as progressive, deontological, and based in social contract theory. Section 2 will introduce the communitarian critique and I will explain how Sandel criticizes Rawls for having an individualist conception of self, and establishing a centrality of 'choice.' This section will also explore Sandel's arguments that rights have an implicit moral grounding and that justice is a vice. Section 3 will discuss Rawls' response to the communitarian critique where Rawls distinguishes institutional and non-institutional identities in order to say that the criticisms of the communitarians only apply to non-institutional identities. This reply, however, is not satisfying for people with a full conception of the good like

the communitarians because there is no reason to prevent institutions from taking up a particular conception of the good if that particular conception is correct. This is what I call the conflict of restraint. In other words, using the government to bring about good in the world would seem to be fully justified. Finally, section 4 will introduce Beauvoir's existentialist ethical system, which is an ethics of freedom. Existentialism as a Rawlsian non-institutional (moral) identity is an adequate response to the communitarians because it is compatible with the Rawlsian conception of self and can criticize communitarianism on its own terms as a proper moral theory.

## 1. Rawls and the Liberal Theory of Justice

Rawls' *A Theory of Justice* is the seminal work that frames the liberal-communitarian debate. *A Theory of Justice* establishes a liberal, deontological, social contract theory grounded in the argument of the original position. In the original position, individuals decide upon rational principles to govern society and Rawls believes there are certain rational choices that anyone in the original position would make. From this Archimedean point, Rawls argues that individuals should have liberty and that there should be an equal distribution of the social and economic goods. Rawls' theory is distinctive for its priority of choice because the original position is fundamentally chosen through rationality. Furthermore the choice he says is most rational is one of radical equality of the maximin rule (which maximizes the minimum amount of goods that an individual should be allotted). Finally, Rawls' conception of the good is split into the thin theory and the full conception. The thin theory is the foundation of the original position and includes only the bare minimum conception of goodness for a human being, while the full conception is a sort of contingent and particular good that is only good in relation to a person's aims and desires.

Rawls begins with the original position, a thought experiment where people are placed in an abstract realm preceding the social world. The individuals are called upon to determine

rational principles to structure society before they know what their particular situation in society will be. Knowing nothing of their particular existence, they are free to determine the best principles of society without the corrupting influence of self-interest. The knowledge of one's particular situation is understood as generating a negative incentive to favor one circumstance over another (namely one's own) (Rawls in Arthur, 26). Justice requires the suspension of self-interest so that all can be treated in the proper manner with equality. The original position is distinct from other social contract thought experiments because there are *people* in the original position who make the choices about justice, not deities. There is a sense of the original position as a gathering of people. From such a situation emerge the values of equality and justice.

Rawls argues that the veil of ignorance rationalizes the application of the maximin rule whereby participants seek to maximize the minimum value given a set of possible circumstances. “[T]he rule directs our attention to the worst that can happen under any proposed course of action, and to decide in light of that” (42). From this purview, Rawls deciphers two principles of liberal society: the first is the principle of equal liberty stating, “each person is to have an equal right to the most extensive basic liberty compatible with a similar liberty for others.” The second principle pertains to social goods and states: “social and economic inequalities are to be arranged so that they are both (a) reasonably expected to be to everyone's advantage, and (b) attached to positions and offices open to all” (Rawls, *Theory of Justice*, 53). Additionally, the first principle has priority over the second principle such that equal liberty takes precedent in all cases over the priority of the distribution and production of social and economic goods. In other words, the distribution of social or economic goods should never come at the expense of individual liberty.

Those very ‘social or economic goods’ are part of Rawls’ more extensive theory of the good. The good is particular, in contrast with the principles of justice, which are universal. The good is a good for a particular purpose and in respect to a particular person and their reasonable desires (*Theory of Justice*, 399). The first part – that something is good for a particular purpose



– specifies that goodness is a thing’s ability to accomplish the tasks that are reasonable to want that thing to do. For example, it is reasonable to expect a watch to be able to tell accurate time and be a fashionable accessory (403). The watch is good at a particular task that is reasonable to expect from a watch. Secondly, this task must be aligned with the goals of a particular individual. Each person has their own life plan, says Rawls, that should be determined by rational principles and be aware and informed of the person’s particular situation and their aims and interests (408-9). Happiness, therefore, is the “successful execution” of a rational plan (409) and a person’s “aims and interests” are some particular milestones along the course of a long-term rational life plan. The life plan serves as the “basic point of view” from which to consider all value judgements relating to a particular person (409).

Rawls’ conception of the good is split into two distinct parts: the thin theory and the full conception. The thin theory of the good employs only those things which are good for all human beings alike. It is based upon a very basic understanding of the person that is presumably so basic and indisputable that it should be entirely uncontroversial. The full conception of the good, on the other hand, is contingent and functional, determined for each individual respectively. The full conception is determined through rational principles of evaluation (401, 403). Each person chooses what is good for themselves in a decentralized fashion based on their particular values, circumstances, and interests. Even the rational principles, however, are imperfect because human knowledge is imperfect. Our subjective evaluations of our personal goods are constantly changing to accommodate circumstances and our changing values. This imperfection is acceptable to Rawls and is part of the reason he espouses a descriptive (405), decentralized theory of the good.

The right juxtaposes the good in Rawls’ theory. The right concerns the proper framework of society and its institutions as determined in the original position. The good concerns particular individuals and their “plans” of life. Rawls points out three contrasts between the right and the good: one, that the veil of ignorance is counterproductive when considering the

principles of rational choice which determine a person's good; two, that there is no need for consensus on matters of the good and that consensus is even counterproductive; and three, that conceptions of the good ought to be adjusted to a person's "particular situation" (*A Theory of Justice*, 446-9). The thin theory of the good is the basis of decision-making in the original position. In order to discern their options, the choosers must know something generally about what human beings desire. For this reason, the thin theory includes only the most basic and essential aspects of the good on which to decide what is right. Wherever the right and the full conception of the good conflict, the right takes precedent over the good because the right is based on rational expectations that anyone would agree to if they were in the original position, whereas the full conception of the good is only relevant in relation to a particular individual.

The broad application of Rawls' theory is justified by the social contract. Rawls justifies the extension of the agreement to objectors by citing its rational basis and by asserting that they *would* agree to the contract *if* they were in the original position, which precedes the social conditions. Rawls can be called a contractualist because he asserts the equal moral worth of each choosing individual as the justification for the social contract. Because each choosing individual has equal moral worth, there is a need to conceive of a situation where each has equal power over the result of the choice, and each is not biased based on their particular circumstances so as to disadvantage others. Rawls' is a social contract based on equal intrinsic value rather than an alignment of contingent interests, making it, in this sense, contractual. The understanding of Rawls qua contractualist will be important when assessing his ethical compatibility with existentialism.

Finally, Rawls is committed to impartiality. He establishes a deontological framework in order to allow evaluations of the good to occur on a decentralized scale. Rawls prescribes the rules that ought to be followed in order to get from a given society to a better one, but not any particular actions. He calls us to *compare* the present circumstances (whatever they may be) with the ideal society that would be built based on the principles of justice.

“Imagine, then, a hypothetical initial arrangement in which all the social primary goods are equally distributed: everyone has similar rights and duties, and income and wealth are evenly shared. This state of affairs provides a benchmark for judging improvements. If certain inequalities of wealth and organizational powers would make everyone better off than in this hypothetical starting situation, then they accord with the general conception” (Rawls in Arthur, 31).

Rawls posits an “initial arrangement” which serves as a “benchmark” for evaluating potential changes to the society. The question this raises is whether his idea is of a progressivism or an idealism that he is just incapable of explicating at the given moment. If we take idealism to be the case, however, we realize that only progressivism is plausible because there is no point at which a human being would have all of the information necessary to make a proper decision. Rawls recognizes the human being as an imperfect knower because the perfect knower is a fiction. Rawls will say that the human being needs to consider the cost-benefit analysis of the time spent using “deliberative rationality” and that even with a properly considered plan, there is still uncertainty (Rawls in Arthur, 422-4). The point is that Rawls’ theory can be understood as progressive in the sense that it is an idealism whose idea of the ideal is determined in a decentralized fashion.

Rawls’ contractual, deontological framework guides decision makers in the direction towards a better circumstance after a careful comparison between the ideal and the present. “Morally wrong acts [under contractarian deontological ethics] are, on such accounts, those acts that would be forbidden by principles that people in a suitably described social contract would accept” (Alexander and Moore). In the case of Rawls, the principles are determined under the veil of ignorance and stated in *A Theory of Justice*. The deontological aspect describes the fact that the decision-making moral actor must first consider the *duty* (deon) established through the *methods* (logos) that Rawls describes. Furthermore, when Rawls says that there is a “benchmark for judging improvements,” it suggests the progressivism of the deontological framework. In other words, the framework delegates certain types of decisions to rational agents who are regularly able to accommodate changing circumstances. Rawls is distinct, however,

from the general case of deontology which investigates the acts of the individual as good or bad. Rawls' discussion, in contrast, addresses the framework of the social contract. Rawls calls for evaluations of and changes to the structure of a logical system governing society. In this way, Rawls' deontological ethics is not agent- or patient- centered (like other ethical systems) in the sense that it is not person-centered. Instead, Rawls puts the social contract itself at the center of the ethics.

Rawls' impartiality and his decentralized, progressive deontology show the conception of self that is operative in Rawls' theory. Impartiality is important in a political theory which seeks to govern a pluralistic society. Taking the minimal possible conception of the human good as the basis for the decisions in the original position allows the social contract to transcend the dividing lines of various competing belief systems to enable the governance of a pluralistic body of people. The decentralized, progressive deontology accommodates Rawls' conception of the person who is valuable in their function as a chooser. The conception of self and presumed impartiality, however, will serve as the very grounds on which Sandel will criticize Rawls. Sandel claims that Rawls' thin theory and conception of self are substantive in that they are not justified in presupposing individualism and the priority of choice.

## 2. Sandel and the Communitarian Critique

Michael Sandel is one of the leading critics of *A Theory of Justice* and his communitarian criticism seeks to demonstrate the inability of Rawls' liberalism to create a meaningful world for the human being. Sandel makes three primary criticisms against Rawls. The first (1) is the thinly-constituted conception of self in Rawls which, Sandel says, ignores the reality of identity. Part of this criticism lies in Sandel's other argument (2) that rights have a moral grounding despite the ways in which people typically think of rights. In other words, we have the right to do something *if* that thing is considered morally valuable. Finally, (3) Sandel argues that rights-based thinking can be a moral vice using examples of situations where the introduction of

rights-based thinking and language make a group worse-off. These three arguments form the basis of Sandel's communitarian criticism of Rawls. Ultimately, Rawls tries to say that the criticisms are not valid because liberalism is part of a person's institutional identity and ethics is part of the non-institutional identity, but this gives rise to the conflict of restraint.

Sandel's first criticism is that the picture of the self in Rawls' theory is atomized and dislocated, thinly-constituted, and ignorant of the reality of identity. Sandel argues that "aims and attachments" constitute part of a person's identity (*Public Philosophy*, 153). When Rawls claims that the individual has to make a choice through 'deliberative rationality' of their 'aims and interests' with respect to their life plan, he implies that an individual can change their desires on a moment's notice. Sandel will point out, however, that in reality, a person cannot usually change their position on a moment's notice or simply through deliberative rationality. Being determined through deliberative rationality means that the person's life plan cannot be determined by irrational considerations like "loyalties, obligations, and traditions" (154), which are important parts of the 'thickly constituted' or 'sustained self,' according to Sandel. This would mean that Rawls is working with an idealized, absolutely rational image of the self; detached from human reality.

Much like the atomized self of pure deliberative rationality, the idea of self in the original position is also atomized and idealized, according to Sandel. The selves in the original position are supposed to be just like the people in the real world, but without knowledge of their particular circumstances. The people in the original position are the perfect choosers because they are separated from the circumstances which would make their lives particular in the real world: making them different from the people in the real world. But the fact that the agents of choice in the original position are humans, rather than gods, meaningfully connects them to the real world. This position is Rawls' Archimedean point, a neutral perspective from which to examine the things in the world and choose the rules of conduct between persons.

Sandel also points out that a neutral framework is only necessary if human beings are understood from an individualist perspective. In a society, people naturally work together for mutual benefit, but when this happens, there is also a dispute about how the products of the cooperative venture are to be distributed (*LLJ*, 28-9). Rawls proposes the neutral framework to guide the cooperative society, but its very necessity assumes an atomized human ontology. “It is precisely because we are essentially separate, independent selves that we need a neutral framework” (Sandel, *Public Philosophy*, 153). The neutral framework is a solution to problems of cooperation which assumes an “antecedent individuation” of the subjects and restricts the good of the community to the internal realm of the individual (*Public Philosophy*, 149). These two suppositions form the criticism that Rawls’ conception of the self is atomized and dislocated because of a restricted sense of community. There is an assumption about the state of nature in Rawls: that people naturally do not get along, that their interests clash, and that cooperation requires mediation.

Sandel also points out Rawls’ centrality of choice. For Rawls, a primary function of the self is choice. In this way, Sandel calls Rawls anti-teleological in the sense that “what is most essential to our personhood is not the ends we choose but our capacity to choose them” (Sandel, *LLJ*, 19). Teleology is goal-oriented and focused on a fixed point. The concept of self in Rawls is distinctively non-teleological because the goal is entirely irrelevant. Of first importance, instead, is the function of choice for the individual. The liberal perspective on the issues of free speech and religious liberty, for example, is not about the content of the religion or the speech, but rather the fact that the content is the product of a choice. “According to this view, government should uphold religious liberty in order to respect persons as free and independent selves, capable of choosing their own religious convictions” (*LLJ*, xii). The example of religious liberty is helpful because religion has a particular moral content which differs from one religion to the next. One religion might say that X is morally bad while another could say that X is permissible or good, but liberalism is silent on this issue. Instead, liberalism is only interested in the choice

that people make. On this view, it does not matter whether the person chooses to do X or Y, but rather *that* they choose. Sandel's criticism lies in the fact that someone cannot at once firmly believe in the reprehensibility of X while also affirming the inconsequential nature of the ends of that decision.

In the case of free speech, Sandel explains how Rawls' ontological conception of the human being fails to consider the substantive aspects of belief systems. Sandel brings up an example of Nazis who want to march in a neighborhood where holocaust survivors live. The liberal mistakenly would affirm the right of any marchers to say what they wish, regardless of the content so long as there is not physical harm as a result. More importantly, claims Sandel, the liberal would have a reduced understanding of the harm done to the holocaust survivors because of the liberal conception of self. He says, "for the unencumbered self, the grounds of self-respect are antecedent to any particular ties and attachments, and so beyond the reach of an insult to 'my people'" (*LLJ*, xiv). No group-directed insult could cause harm to an individual because that individual *is not* a part of that group ontologically. This person would only seem to *have* beliefs or ideas which can be insulted or attacked without causing identity-based harm. The reality of harm that results from speech is evidence of the constitutive nature of belief systems for human existence and the non-abstract nature of discourses.

Sandel's second criticism is that rights have a moral grounding and that the extension of rights is a value judgement. The freedom of religion is one particular right that Sandel believes to be a substantive moral judgement about the nature of religion in general. According to Sandel, religious liberty is a recognition of the moral value of religion rather than a disinterest in its content. A government which recognizes religious liberty as a right, therefore, is understood as making a judgement of the value of religion for society. Sandel will say more generally, "the case for the right cannot be wholly detached from a substantive judgement of the moral worth of the practice it protects" (*LLJ*, xiv). Sandel is making the claim that even the freedoms which are commonly espoused by liberals are laden with implicit moral judgements. Saying that they

*cannot* be detached from the moral judgements is not an ambiguous word choice: there is an inherent connection between the right to freedom of religion and the perceived value of religion in general.

Moreover, Sandel claims that the distinction between rights being used for a *good* purpose and rights being used for a bad one is “common sense”. Sandel will claim that common sense tells us that people using rights to advance a morally bad agenda should not be allowed to use their rights in such a way. The case-in point for this matter is the treatment of civil rights protestors, on the one hand, and Nazi rally organizers on the other. The deontological social contract says that each group has a right to freedom of speech and that we must refrain from making a moral judgement one way or the other. Sandel alludes to something deeper down in the spirit of the human being when he says things like ‘the moral dimension *cannot* be removed’ and ‘the distinction between Nazis and civil rights protestors is *common sense*’. In this way, the logic of liberalism is flawed because it contradicts the true sense of self that is inherently known but nonetheless rejected by the liberals.

Sandel also notes that the good is (at least sometimes) prior to the right: inverting the priorities of Rawls. The first part of this criticism has already been alluded to: that Rawls presupposes thick concepts in the supposedly ‘thin theory’ like individualism and the priority of choice. The second dimension is the order of importance: the good is *more important* than the right. Sandel does not need to make this argument for every case or even establish a fully-formed framework in which the good functions as more important than the right.

To illustrate how the good is prior to the right, Sandel raises the example of the benevolent family. In this family, there is a great deal of benevolence and self-sacrifice. The family is “governed in large part by spontaneous affection” and therefore has no need to invoke justice or any conception of rights because they are simply content with one another (*LLJ*, 33). They have a faith in each other’s goodwill. The introduction of justice, however, degrades the family’s communal bonds. Sandel asks us to assume that some problem has strained the family



and caused them to grow less trustworthy and benevolent, and therefore make more frequent claims of 'right' and 'justice'. A sense of duty replaces the old sense of benevolence. In this example, justice is positively correlated with a less preferable situation, suggesting that justice is not functioning as a virtue, but rather as a vice.

Sandel also shows that the introduction of justice came at the expense of benevolence, implying causal relationship. The members of the family stopped their self-sacrificing and at the same time started taking account of their fair shares and allotments and started making demands of others to get what they justly deserve. The replacement of benevolence is one-for-one, in the sense that an agent may act in a given circumstance with either benevolence or justice. Benevolence is the sacrifice of the self for the sake of others, whereas the type of justice which replaces benevolence is a demand that others act in a particular way which accords with the social contract. This type of justice is an accusation against another agent that they are not giving their fair share or that they are taking more than their fair share of the social goods. On the level of the system, justice, in this sense, would seem to produce a body of accusers and judges whereas a system of benevolence produces sacrificers who need not take account of their particular allotment. This view sees justice as an accusation and a one-for-one replacement of benevolence, leading to a less morally-preferable situation overall.

Moreover, the 'reflexivity' of justice causes a self-perpetuation of justice that further entrenches its negative consequences throughout the society. Essentially, invocations of justice tend to lead to more invocations of justice. Sandel points to Rawls who says that justice can be "contagious" (*LLJ*, 34). Therefore, to invoke justice can, in some cases, initiate a downward spiral of justice claims which erode the fabric of interpersonal bonds. When one individual makes a first justice claim or accusation, something about the community changes qualitatively. The likelihood of another justice claim increases with each invocation of justice. Recognition of this fact demonstrates the systemic effects of a justice claim and explains another dimension of justice's vicious character: the multiplier effect. Notably, if justice were acting virtuously, the

multiplier effect would be reversed. The nature of justice claims to lead to more claims of justice explains their systemic effect and magnifies their overall moral value whether that be positive or negative.

Ultimately, Sandel's criticisms do not form a full positive conception of communitarianism. In fact, no such positive conception has thus far been elaborated, but something might be gleaned from Sande's criticisms. Sandel's criticisms against Rawls' liberalism each gives a partial picture of communitarianism. According to Sandel, the conception of self is alienating, the good is more important than the right, and justice is sometimes a vice. Therefore, one might assume the positive conception of communitarianism would include a strong and thickly-constituted conception of the good, a strong identity-based conception of self, and attempt to minimize the number of justice claims. Identity would not be chosen rationally, but rather, discovered (*LLJ*, 22). A person's identity would seem to come, then, from the people around them, social norms, their "surroundings" generally, and other things intrinsic to human nature. The human being *finds themselves* in a world, having beliefs and an existence before they are even able to think or choose rationally. Values, moreover, are determined by one's surroundings through either osmosis-like absorbing of mores or a conscious decision to align one's values with those of the collective. A certain disposition to put the community interest above one's own self-interest would naturally fit with communitarianism. The communitarian conception of self is situated in a larger context of community where the individual is a part of a whole. Self-sacrifice is understood as a teamwork mentality where gains for the team are gains for the individual because the individual *is* part of the team. The collective, thereby, takes on the character of a moral actor with particular moral goals to which individuals should sacrifice their self-interests.

It is difficult to determine a positive conception of communitarianism, but Sandel's criticisms of Rawls can give some amount of insight into what this might look like. Positive communitarianism would seek to solve the problem in Rawls of the atomized, dislocated self.

The positive conception might include things like (1) a sense of self that is at least partly determined by the community, (2) institutions tasked with moral responsibility, and (3) trust – or other interpersonal virtues – taking a priority over justice. Even without a positive conception, however, Sandel’s criticisms stand on their own. He says that liberalism presupposes certain moral values, that it has an incomplete and flawed conception of the self, and that the right is not always prior to the good.

### 3. Liberal Response to the Communitarian Critique

Rawls responds to the communitarian critique by trying to prove his impartiality on moral matters. He does this by emphasizing the thin nature of the thin theory of the good, through appeal to inherent human capacities, and by drawing a distinction between institutional and non-institutional identities. The thin theory of the good, he says, is so thin that it can easily apply to everyone and, therefore, it could apply to even the communitarians. If the communitarians can be accounted for within Rawls’ theory, then that would diffuse their argument. Second, he specifies which particular universal capacities are implicated in the thin theory; all of them are capacities which aid in the recognition of fair terms. Finally, the distinction between the institutional and non-institutional aspects of an individual’s identity contextualizes the preceding points and gives shape and cohesion to his rebuttal. Unfortunately, however, the very institutional / non-institutional identity distinction leads to a problem that shall be called the conflict of restraint.

Rawls is disinterested in metaphysical claims because he understands the thin theory of the good to be so thin as to be entirely uncontroversial. If this is the case, then *A Theory of Justice* rests only on minimal and easily-defensible premises. Rawls addresses the accusations of unjustifiable presuppositions in a footnote:

“One might also say that our ordinary conception of persons as the basic units of deliberation and responsibility presupposes, or in some way involves, certain

metaphysical theses about the nature of persons as moral or political agents. Following the precept of avoidance, I should not want to deny these claims... If metaphysical presuppositions are involved, perhaps they are so general that they would not distinguish between the metaphysical views... with which philosophy has traditionally been concerned" (*Political Liberalism*, 29, see footnote 31).

Rawls's thin theory involves a minimal amount of content. This amount is so minimal and so well-accepted by a diversity of philosophical perspectives that Rawls should have no need to venture into details about his metaphysical premises. In fact, an essential element of the theory of justice is its ability to be widely acceptable in diverse, cosmopolitan societies.

Rawls describes his minimal conception of the person by referring to the capacity for making decisions about the right and the good. If people have this capacity, he says, then they understand fair terms, cooperation, and personal benefit as aspects of the theory of justice just as they understand those same aspects in other cases of cooperative endeavors. People understand society as a "fair system of cooperation," he says (*Political Liberalism*, 29-35). A minimal understanding of human beings must entail some account of cooperation since this is a capacity that is plain to see in a great number of human activities. This system of cooperation would necessarily involve fair terms and personal benefit and, therefore, the original position and the thin theory of the person on which it is based have plausibility. Rawls believes that the principles of justice and the foundation of the original position merely suppose such capacities which anyone should be able to easily accept.

Another aspect of Rawls' defense is the institutional/non-institutional distinction which inherently incorporates the other distinctions of public/private and moral/non-moral. Non-institutional identities are "specified by reference to citizens deeper aims and commitments" (*Political Liberalism*, 30). This aspect of identity is moral, non-public, and can be substantially different for every person. It includes the contents of religion, speech, ideology, etc. A person's institutional identity, on the other hand, is related to "questions of political justice" (30). The institutional identity involves a person's responsibilities qua citizen. It is public and non-moral because it cannot involve particular aims and commitments beyond those that are agreed upon

by consensus in the original position. The institutional identity is part of the foundation of liberalism, based on the social contract, and the same in content for each person. The non-institutional identity can be revised and changed without affecting a person's institutional identity, because, in the just society, people of different moral dispositions are treated with the same value and respect. He claims that the criticisms of communitarians like Sandel do not necessarily affect his own system of political justice because they concern a person's non-institutional identity and leave the institutional identity unaffected. Rawls claims that someone could have a significant change in their moral identity that does not affect their public identity (and therefore their position with respect to justice): "A conversion implies no change in our public or institutional identity, nor in our personal identity as this concept is understood by some writers in the philosophy of mind" (31). If someone can change their non-institutional identity without changing their orientation with respect to liberalism and political justice, then the problem raised by the communitarians would seem to be resolved. In this resolution, one person could be both liberal in their institutional identity and hold communitarian values as a part of their non-institutional, moral identity.

Part of the reason and justification for the institutional/non-institutional dichotomy is present in the very nature of a democratically-structured society. The democratic society has governing institutions that include all citizens as well as non-government groups operated by groups of individuals. These non-government groups are often meaningful, moral-mission organizations that bring people together and help them to develop their moral identities and do good actions collectively. The good-doing aspect and the moral-consciousness-raising aspects of these organizations is what Sandel would find very attractive, but their "opt-in" nature is what most distinguishes them for Rawls. Non-government groups are voluntary in contrast to public institutions, which are imposed on everyone necessarily (*Political Liberalism*, 40-3). Any action which is not justifiable in the original position is not justifiable for the government to undertake because of the fact of plurality and the impossibility of rationally justifying such action to all

constituents. For the government to work towards a morally-thick end would be to force constituents to participate in the furtherance of ends that could not be rationally justified to them. The presence of institutional and non-institutional organizations is correlative to the idea of institutional and non-institutional identities. Since both groups are made up of citizens, their constituencies must take up the appropriate identity when acting on behalf of the organization, recognizing the voluntary or involuntary member status of the other constituents of the group.

Steven Kautz, another defender of liberalism, draws on the public/private aspect of the distinction to defend Rawls against the communitarians. Kautz recognizes the need for education in the moral virtues (70), but argues that the use of public institutions to advance a particular conception of the good would itself be a moral catastrophe. With the public/private distinction, citizens can privately debate morals and instruct others in the moral virtues while avoiding the “social tyranny” (72) that would result from the unwitting imposition of moral values upon a value-diverse population. “To impose a public remedy for the unhealthy opinions of democrats and republicans, however foolish or wicked those opinions might be, is itself an intolerable excess of zeal” (71-2). In order to resolve the problem of perverse ideologies or lapses in virtue, it is necessary and preferable to use non-institutional or private means.

Finally, the institutional/non-institutional (public/private) distinction that Rawls and Kautz utilize in defense of liberalism relies on the disvalue of coercion. Coercion is the use of some sort of technique to influence another agent’s action and receive a desired outcome. Coercion usually has a negative implication because it is understood as taking away another’s freedom, but it is often seen as indispensable for the good purpose of instilling virtue and also for raising children (Anderson).

Using the government for the purpose of coercing adults to act in a certain way consistent with a thick conception of the good, is clearly not acceptable under Rawls’ political justice, but coercion would be acceptable within the private, non-institutional, or moral space

(this is the liberal response to communitarianism)<sup>1</sup>. The basis for this distinction lies in the very nature of the ‘institutions’ and ‘non-institutions.’ Institutions, according to Rawls are defined by required participation in the sense that citizens are not able to choose whether or not to participate. In this case, they can only be justifiably governed by the thin theory of the good. In contrast, non-institutions and specifically ‘communities and associations’ are defined by voluntary association and membership, such that agents are able to exercise *choice* with respect to their membership. It does not diminish freedom if an association accepts a thick conception of the good because members of the organization are only bound to remain participants by their own choice. Rawls defines ‘democratic society’ as being bound by ‘birth and death’ and communities and associations, in contrast, are joined voluntarily at the ‘age of reason’ (*Political Liberalism*, 40-1). The understanding of ‘voluntary association’ in communities and associations puts these groups in the non-institutional realm and thus permits their means of social coercion in ways that would be unacceptable if they were undertaken by an institutional entity.

Rawls’ response, unfortunately, is not satisfying to a particular type of person who shall be called the altruist. The altruist seeks to bring about good in the world. They want to change the world to be a better place for human beings, and they want to convince others to help them in their project. The altruist believes they are correct in their notion of the good and that they are justified in using coercive means to bring about the good.

Communitarians can be understood as a particular type of altruist because they seek to bring about good as defined through a thick moral framework. The government and its public institutions, furthermore, are an extremely effective means of bringing about the good in the world, and if the altruist is able to use public, government resources to advance their cause then

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<sup>1</sup> John Stuart Mill has a particularly interesting and complex opinion on this topic. He argues in *On Liberty* that social tyranny and imposition of opinions on others is wrong, but also that people have a duty of “stimulating each other to increased exercise of their higher faculties” (Chapter IV, 140). This is what is meant by acceptable coercion and might even include such things as ‘punishment by opinion’ (Mill, 139). Full elaboration is needed, but suffice it to say that some amount of private coercion is acceptable that would be unacceptable if performed by a public institution.

they *should* because it means doing what is right (more effectively than through private social means) even without the full consent of the constituency of the governed. In other words, it is at least sometimes *justified* to *coerce* people to do the *right* thing.

This is the most soul-crushing time to invoke Rawls and the notion of justice because it necessarily means preventing someone from doing good in the world. I will call this the ‘conflict of restraint’ because a person’s liberal institutional identity calls on them to restrain their desire to do good in the world, against the better judgement of their moral identity. It is especially difficult for those who agree that the action is *good* because they are asked to withhold their firmly-held convictions. Only someone with loose convictions could do so, or someone who is more invested in some other cause, who believes there is something *wrong* with the actions of the altruists.

It is hard to claim that there is sufficient reason for someone with a fully-constituted, thick conception of the good to restrain themselves for the sake of liberalism<sup>2</sup>. Imagine an altruist who objects to the use of institutional coercion to affect the good. Is that person *really* an altruist, or are they a liberal? This person would seem to be primarily committed to liberalism, since, when altruism and liberalism conflict, they take the liberal position. The person’s liberal tendencies are able to provide a strong enough moral motivation to override any of the person’s ‘secondary aims and commitments’ as Rawls would put it. Here, liberalism causes an internal conflict which shall be called the conflict of restraint because its effect is to restrain the otherwise-potent convictions. The conflict of restraint seems to pose a challenging problem for liberalism that pops up precisely when Rawls invokes the institutional/non-institutional argument to defend against the communitarian critique. Institutional/non-institutional then becomes a false dichotomy because the institutional seems to “reach” into the

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<sup>2</sup> One might argue that toleration and freedom have a positive moral value, but this value is often defended most convincingly by liberal arguments, so they might not be recognized by the altruist. Even if they were granted, however, there could certainly still be times when the value of toleration and freedom are outweighed by altruistic concerns.



non-institutional in order to prevent particular acts of altruism. In order to resolve the conflict of restraint, and restore the institutional/non-institutional dichotomy, we have to look to the existentialist Simone de Beauvoir whose *Ethics of Ambiguity* can resolve the conflict of restraint when a liberal embraces existentialism in their non-institutional identity.

## 4. Introducing Existentialism

Beauvoir's existentialist ethical/metaphysical paradigm complements the Rawlsian system of political justice in an interesting and useful way. When taken together, liberalism and existentialism resolve the conflict of restraint because they respond in the same way to the types of situations that give rise to the conflict. If one human being were to be liberal in their public-institutional identity and existentialist in their moral-noninstitutional identity, the conflict of restraint within that person would be resolved. This would dissatisfy the communitarian because they would not gain the sort of fully-constituted self-identity that they value. This communitarian desire, however, is childish. Beauvoir says that to desire a ready-made, fully-constituted moral identity is characteristic of the serious person. Beauvoir's archetype of the serious person is a useful tool to combat the communitarian critique. Accepting the help of Beauvoir, however, would be to undermine some of Rawls' claims of impartiality on moral matters because it would imply liberal preference for the moral identity of existentialism.

One important connection between the theories of Rawls and Beauvoir is that they share a similar conception of the human being. Both stipulate certain universal values on the basis of ontology, while also embracing the human being's rational capacity to freely choose. Beauvoir notices this same ability of value-positing and adds that it is *morally* imperative that the subject posit value and ensure the freedom of others to do the same. She sees the world as a priori value-empty until the value-positing being (the human being) arrives (114), and she equates the "moment of choice" with the "moment of the concrete fulfillment of man and morality" (Beauvoir, 22). This is a defining moment for Beauvoir, since she correlates 'choice' with

‘fulfilment of man.’ This correlation identifies choice as a central aspect in Beauvoir’s conception of self. Moreover, Beauvoir’s evidence, like that posed by Rawls, is descriptive: “life imprisonment is the most horrible of punishments because it preserves existence in its pure facticity but forbids it all legitimation” (Beauvoir, 31). The prisoner example demonstrates the value of autonomy (freedom of choice / positing of values / pursuit of a fundamental project) over facticity (material being). Autonomy is uniquely human because it is the bringing of value into the world. Protecting autonomy is therefore valuable in itself. The freedom-centered ethic is thereby defined as a universal human value.

Another significant similarity is between Beauvoir’s two-part definition of the passionate person and Rawls’ two-part conception of the person. The passionate person has two levels of moral understanding: one – the serious level<sup>3</sup> – which has convictions, values, aims, and attachments; and the other level, which recognizes the very subjective nature of those values and posits freedom as the universal value. The subject’s serious-level understanding *wishes* its convictions to be universal, yet the second level rejects the possibility of the serious level’s convictions being universal. In rejecting the universal nature of the serious level, and embracing the true value of freedom, the second level makes itself universal (Beauvoir, 23, 49, 72-8). Rawls’ non-institutional identity corresponds with Beauvoir’s serious level of self-identity – the one that posits values and fills the world with meaning. The institutional identity would seem to correspond with the second level – the level that recognizes the subjective nature of the first and tears away the objectivity that it deeply desires. The public/private dimension of the institutional/non-institutional duality is also present in Beauvoir’s passionate person. Beauvoir says that it is virtuous of the passionate person to help other members of the public to recognize the truth of their own subjectivity (74-5). Beauvoir calls on the passionate people to engage in a *social* project to disclose the truth of subjectivity. Rawls, however, fails require the social project

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<sup>3</sup> The serious level is so called because it is the only level that is understood by Beauvoir’s serious person archetype.

because the social contract does not engage ethical implications for individuals. The subject must act without bias or subjectivity with respect to their institutional identity, and Rawls presumes that the subject's non-institutional identity can have whatever worldview it so desires. Despite the difference in terms of ethical requirements, the two-part view of the person in Rawls and Beauvoir is a clear similarity that suggests it is reasonable to bring together liberalism and existentialism.

The example of Judge Riley serves to demonstrate how liberalism and existentialism can coexist. Let us imagine that Judge Riley is a judge in the criminal court of law under a Rawlsian liberal democracy. Judge Riley has a clear and powerful institutional identity that calls on them to restrain their personal moral convictions in order to prosecute offenders of the law. Riley is faced, in the course of their long career as a judge, many cases regarding the rights of protesters. Riley has heard trials of civil rights protesters facing challenges to their rights to march in the streets. In every case, Riley has upheld the right of the civil rights protesters easily, knowing not only that the protesters have the right to assemble in a liberal society, but also that the protesters are doing good. However, one day, Riley is faced with a different type of case, one where Nazi organizers want to march in the streets non-violently and speak their minds. Riley knows that the ideology they espouse is wrong and that it might spread to other people if Riley fails to prevent the Nazis from marching in the streets. Riley is faced with a situation where people have the right to protest, but that they are not doing good when exercising that right. Riley chooses to grant the Nazis the right to protest, and later, when Riley is not acting as a judge, Riley shows up to the protest as a counter-protester<sup>4</sup>.

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<sup>4</sup> Let us imagine that this is a fully-legal action and that Riley does not exercise any institutional powers when demonstrating as a counter-protester. Furthermore, one might argue that the principle of a judge taking part in a demonstration over which they ruled is wrong in principle because the judge's personal opinion could affect Riley's decision when acting as a judge. The novel point I make in this paper is that, with existentialism, there is no conflict between the institutional and non-institutional selves of liberalism. If Riley's decision were affected by personal opinion, the decision itself would not change. Furthermore, the conflict of restraint seems to be the very origin of the contemporary concept of "bias."

On the one hand, Riley is a liberal and chooses to uphold the rights-based deontology of Rawlsian political theory. Riley could have been acting as a liberal and restraining their own moral convictions when in the courtroom. In another sense, we might think of Riley as an existentialist. The existentialist recognizes the value of human value-positing and never seeks to suppress human freedom. The only justification for doing so would be to liberate others from oppression. Even though the Nazis have a morally-bad ideology according to the existentialist, suppressing the freedom of the human beings behind the ideology is also morally wrong. The liberal and the existentialist both deal with the Nazi protesters in the same way. The most philosophically significant part of this example is the fact that when Judge Riley, who is an existentialist, is called to act as a judge, the decision does not cause an internal contradiction for Riley because their public and moral identities instruct them to act in the same way, albeit with different justifications. The liberal public identity instructs the judge to respect the social contract whereas the existentialist moral identity defines the moral wrongness of suppressing speech. Notably, the conflict is not completely resolved in this example. It is *hard* for the liberal and the existentialist alike to allow the Nazis to protest. With Judge Riley, the conflict between the institutional and non-institutional identities seems to be resolved by bringing together liberal political theory with existentialist morality. Bringing both identities parallel to one another in the example of Judge Riley, resolves the conflict of restraint.

Beauvoir's ethics is also helpful in that it can directly account for the communitarian critique, so long as one understands the communitarians to be what she calls the 'serious' person. The serious person does not embrace the autonomy/freedom that they are capable of and, therefore, the serious person prevents the actualization of the value that they have the potential to posit. Communitarians espouse the value of a fully-constituted sense of self derived from local normative ethics. There is, therefore, a strong connection between the serious person and the communitarian. The communitarian criticizes the liberal for failing to grant individuals a thick self which the communitarian understands as a healthy and important part of being

human. The serious person, similarly, rejects their own ability to value-posit in order to accept a fully-constituted worldview. Both positions (serious and communitarian) (1) reject the freedom of choice, and (2) try to replace it with a worldview that is given to them by others as ready-made. The existentialist says that the exchange of freedom for a ready-made worldview is a failure to realize one's true human purpose of choosing. Beauvoir says that the serious man "forces himself to submerge his freedom in the content which the later accepts from society" (Beauvoir, 49). She also calls the serious person "the shameful servant of a cause to which he has not chosen to rally" (Beauvoir, 74). The rejection of choice and the decision to submit to the moral authority of the community or a particular ideology puts the communitarian in a position that is vulnerable to this sort of criticism from Beauvoir. The communitarian and the serious person share in common the rejection of choice and the submission of their choosing capacities. Beauvoir sees this position as inherently bad because the acceptance of a normative cultural ethic without the serious consideration of alternatives denies the exercise of the autonomy/freedom of a value-positing being: the very thing that brings meaning into the world. Thus, Beauvoir has grounds to argue that the communitarians are morally wrong about the nature of values, and it is the very claim of communitarian values that allows the communitarians to reject liberalism.

Beauvoir's metaphor of childhood explains the motivations of the communitarian, who seeks to relieve the pain of ambiguity. She describes the moment of transition from child to adult as both joyful and dreadful because it is a liberation from being qua facticity, but it is also an entrance into a world of ambiguity (Beauvoir, 42). Being cast into the world without direction is terrifying, and many would prefer to live in a world that is ready-made and have a fully-constituted sense of self, determined by external forces. Beauvoir rejects the urge to think this way, calling it a "resignation of freedom" and "a positive fault" (41). The serious person is morally blameworthy for not bringing meaning into the world when they have the potential to

do so. Beauvoir's work gives a valuable account of the communitarian tendencies and helps us to explain the very motivations that would lead the communitarians to the position that they take.

To be the passionate person, instead of the serious person, is difficult because it means that one's convictions are subjective. "What he defines as objective truth is the object of his own choice," according to Beauvoir (74). The passionate person wants to understand the world as it really is, but that person is only able to see the world from within their own positionality. The passionate person desires objective truth on moral matters, but they are at a distance from that truth because of their recognition that the truth is bound up in their subjectivity.

Rawls' dualism (of institutional and non-institutional identities), however, poses a problem that is not found in Beauvoir: the conflict of restraint. Rawls claims that individuals are able to have fully-constituted identities while also restricting that meaningful identity to the non-institutional sphere. The problem with this narrative is that the same person both acts as citizen and as private individual. Rawls fails to recognize the ambiguity of the situation in which he places the citizen: at once clinging to their presumed-objective convictions in private, while also recognizing the subjectivity of value-generation in the public. The public self collapses in on the private moral self when the singular whole human being recognizes the hypocrisy inherent in having objective convictions in private while publicly speaking as if value is subjective. This is the core of Sandel's criticism when he says that "the assumptions contained in the original position are strong and far-reaching rather than weak and innocuous" (*LLJ*, 65). Beauvoir's recognition of the ambiguity of the passionate person's situation begs the question of why Rawls does not acknowledge the same ambiguity. Rawls seems to take for granted that human beings can separate their institutional and non-institutional selves. The real unity of the two parts of self produces an ambiguity that Beauvoir embraces, and Rawls ignores.

Upon realizing the unity of public and private within one singular consciousness, one might question whether Rawls' claim of impartiality is valid. It is certainly possible that liberalism is a judgement that institutional matters are *more important* than non-institutional

matters, implying that things relegated to the non-institutional are relatively unimportant. Take, for example, the differences between two people of differing religious beliefs. One religious tradition forbids its followers from performing action X, while the other permits it. If action X is considered by the ethics of freedom to be inconsequential – having no bearing on freedom or choice and being itself an expression of freedom or choice – then the decision is left up to the individual to decide for themselves. If, on the other hand, action X has a significant effect on freedom – whether positive or negative – then it is within the domain of the public institutions to regulate such action for the enhancement of freedom. It is up to the institution or as a person acting as their institutional self to regulate such action for the enhancement of freedom and the enabling of choice. Beauvoir's recognition of the subjective origin of serious person's values is, therefore, significantly damaging to Rawls' response to the communitarians because the serious aspect of the passionate person's identity correlates to the non-institutional identity. The apt correlation between serious and non-institutional selves demonstrates that the metaphysical grounding of (presumably impartial) liberalism actually has a significant impact on the ethical content of other value systems that do not put the human being as the origin of value. Therefore, if the connection between existentialism and Rawls' liberalism is proven true, it would suggest that there is a certain ethical partiality built into liberalism.

Some differences between Rawls and Beauvoir might call into question their compatibility, specifically differences in their respective understandings of distributive justice. These differences might be explained by their particular philosophical objectives (Rawls' political project and Beauvoir's ethical project). An important consideration is whether the differences significantly affect the core tenants of their respective arguments. If it is the case that their differing views on justice, equality, and the good are attributable to their respective projects and if the conception of self grounding each theory is compatible, then there is good reason to believe the views are compatible.

Distributive justice, according to Rawls, is a rational choice from the original position, but for Beauvoir, it appears as an ethical duty that follows from the value of freedom. Conceiving the self as chooser, Rawls jumps directly into the original position and equality is chosen because of the reasonableness of the maximin rule. Beauvoir, instead, defends equality on the basis of the ethics of freedom. Debra Bergoffen summarizes the points Beauvoir makes in *Pyrrhus and Cinéas*:

“Only those who are not consumed by the struggle for survival, only those who exist in the material conditions of freedom, health, leisure and security can become my allies in the struggle against injustice. The first rule of justice, therefore, is to work for a world where the material and political conditions of the appeal are secured” (Bergoffen).

Beauvoir’s account understands distributive justice and equality as following from the good of freedom and refers back to the conception of self where the human being is the origin of all value. Equality appears as a means to achieve liberation of oppressed people. Equality also appears as a positive ethical duty to avoid the oppression of consumption which is the result the combination of natural and social oppressions. Natural oppression is the limitation of freedom by the natural (non-human) world and social oppression is such a limitation by other human beings. An example of a natural oppression is a mountain that gets in the way of travel from point a to point b. Social oppressions include slavery (40-1) and imprisonment (31), where a human being is cut off from their fundamental project because of the interference of others. The ‘oppression of consumption,’ as I argue, is at the intersection of natural and social oppressions. The oppression of consumption is the result of inequalities of wealth and social goods given the natural existence of finite resources. To consume is necessarily to take resources which might be used in the struggle for liberation or for the advancement of someone else’s project, but to consume is also a necessary fact of human life. The Portuguese king is an example of unacceptable consumption because his consumption does not serve a human end. The Portuguese king reallocated funding for a maternity hospital in order to build expensive castles (100). This is an example of consumption based on a “deliberate contempt for man;” the



sacrifice of human ends for material ends. Notice the presence, in this example, of an economic trade-off of funding and the existence of finite resources. The existence of finite resources is a natural oppression whereas the choice to deprive human beings of the use of such resources is a social oppression. A certain level of equality is valuable as a means of mitigating the oppression of consumption, since the equality of distributive justice involves the distribution of the means of pursuing projects. Equality of social goods can be seen as a means to the elimination of the oppression of consumption. Therefore equality and distributive justice are ethical duties that follow from the good of freedom, rather than their own independent goods.

In effect, Rawls' distributive justice ensures that the lowest share of the social goods allotted to an individual is the highest possible amount. This distributive justice seeks a radical equality as its end, but the purposes of existentialism do not necessarily go beyond the threshold whereby each person can be reasonably considered free<sup>5</sup>. In that sense, the distributive justice of Beauvoir is not necessarily as strong as the justice of the maximin rule, nor could it be, because the logical progression leaves too much room for alternative interpretations that are less strong on the question of equality than the maximin rule.

The different implications of equality and distributive justice might be simply attributive to the particular projects each philosopher undertakes. Rawls takes a strong position on equality and distribution of goods because he is working on a political project which necessarily examines ethics from a scale that includes all members of society. Beauvoir's ethical project, on the other hand, considers universal duties that are applied on the individual scale. Social contract reasoning considers the question of how people can reasonably come to agreement, whereas ethical projects examine those things which are good independent of agreement. To recognize the difference in their respective projects is not to minimize the substantive content of their differences, but it is to suggest that a single person could justifiably compartmentalize the

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<sup>5</sup> Unfortunately, Beauvoir does not comment on this topic explicitly.

respective theories in much the way that Rawls suggests when making the institutional / non-institutional distinction. The core of my argument is that the conclusions of the respective departments each could provide an independent reason for the values they uphold. If the reasons are different but the conclusions (the values themselves) are the same, then so be it. So long as these values are the same, the conflict of restraint is resolved.

## Conclusion

I have thus far tried to argue for a win-win situation. I want liberalism without the conflict of restraint and without needless presuppositions. I have taken liberalism in the one hand and existentialism in the other and tried to show that, when taken together they can diffuse some common objections. Those include the objections that liberals have a hollow moral framework because of the priority of the right, and the objection that liberalism presupposes important matters of ontology like antecedent individuation of conceptions of self.

At first, I myself agreed with these criticisms and I set out to defend Sandel's perspective against liberalism. I still think some of the criticisms have validity, but I changed my mind when trying to conceive of superior values to those of justice and liberty. To say that there are higher goods than justice is to posit something wonderful. It is to strive for greatness in a way that inspires awe and wonder. How amazing of an accomplishment are the Pyramids of Giza, not only at the time of their construction, but even thousands of years later. It is a work of genius architecture and logistics built to reify the kingdom of Egypt and prepare the Pharaoh for the afterlife. But the Pyramids were built at the torment of thousands of slaves and the cost of their lives. To one person's project (the Pharaoh's) were sacrificed the lives of an entire nation of people. What good could possibly justify such a sacrifice?

Sandel says that the greater good is the good of the community and that people should choose to sacrifice for the good of the collective. He could claim that the sacrifice itself is a moral good, posited and freely chosen. He might rightfully object to the connection between the

communitarian and the serious person on the grounds that the value of community is a true one, and that the specifics of the sacrifice could be determined by the subject rather than ready-given. After all, patriotism sometimes requires revolt. That is to say that sometimes the ready-given is not what is best for the community. Certainly communitarianism requires thinking.

Then, the question would arise of what is the good of the community, specifically? What is the higher good of community to which we are called to sacrifice? What specific values are community values, if not justice and equality? Is it architecture, cuisine, culture, knowledge, happiness, or something else? I have been told before that in France, the baguette is subsidized by the government because it is a cultural good<sup>6</sup>. Are we to choose Baguettes over liberty and equality? An existentialist reason to subsidize baguettes is to aid the hungry and make a basic necessity of life easily accessible to all. This, I think, is a better reason than culture and greatness.

The conflict of restraint is the ambiguity at the heart of liberalism. It is the most challenging moment to be a liberal because everything is at stake. The conflict of restraint forces a choice between those things a person finds most important in the world and the liberal principles of impartiality. It is a deciding moment which defines the strength of a person's moral identity compared to their commitment to the liberal principle. Eliminating the conflict of restraint does not erase this difficulty. It does not eliminate hard decisions, but it does change the nature of the conflict. Instead of a conflict of liberalism against moral values, it becomes two conflicts within liberalism and within the moral value system respectively. Because of their parallel nature, liberalism and existentialism should come to a similar conclusion when faced with such challenges.

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<sup>6</sup> I have not been able to easily confirm whether this is true.

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