

## **Love and Justice: can political impartialism be defended through the value of ‘caring’ alone?**

In this article I consider a problem arising for contemporary impartialist political philosophy in conditions of reasonable pluralism: namely the problem of justifying the priority of political equality to people divided over their values, ways of life and conceptions about the good life.

Impartialism originates in moral philosophy as a commitment to the equality of all human beings: ‘it expresses a belief that others have *equal value* to oneself, and an *equal right* to pursue their own interests’.<sup>1</sup> Impartialism is the requirement that everyone be treated as an equal.<sup>2</sup> A first challenge before impartialist moral philosophy is to adequately account for the clashes that we often experience between the personal and the impartial point of view, between our partial concerns and the demands of impartial moral principles. Any convincing theory of moral impartialism has to take seriously the significance of our partial concerns. A second challenge before moral impartialism is to justify the priority that impartial moral principles claim to have over our partial interests and attachments.

In political philosophy the challenge before impartialism changes in form. Political impartialism has to defend the priority of impartial political principles of justice in a way that does not undermine persons’ commitment to their own values, ways of life and conception of the good. Here, one might want to know why, for example, a church would agree with a state policy that forbids private associations to discriminate among job applicants on the grounds of gender and religion when they advertise employment opportunities? Or why will someone with a scarce and socially valuable talent agree to a 40% income-tax on her earnings? What makes things even more difficult for the impartialist cause in political philosophy is that in the latter (in contrast to moral philosophy) equality is a contested concept. It seems that equality alone *cannot* serve as a

---

<sup>1</sup> Mendus, *Impartiality in Moral and Political Philosophy* (Oxford: OUP, 2002), p. 47 – my italics

<sup>2</sup> Dworkin, *Taking Rights Seriously* (Cambridge: Harvard University Press, 1977), p. 227.

justificatory value for people divided by reasonable disagreements because equality is just one of those things over which reasonable people are in disagreement.

My aim in this paper is to explore an argument that proposes to offer an alternative route into the justification of political impartialism. This argument has been developed by Susan Mendus and it vows to stay away from the contested value of equality, yet to deliver successfully the priority of impartial political justice. Mendus draws on an analogy between love and justice (originally developed by John Rawls) to support her claim that a closer look at the nature of our relationships of ‘caring’ can reveal the existence of congruence between our partial commitments and our sense of justice. In this way, she argues, we can defend the priority of impartial justice through the value of ‘caring’, instead of through the contested value of ‘equality’ (as most contemporary liberal political theorists do). After examining Mendus’s argument in detail, however, I will claim that the substitution of the value of caring for the value of equality is not as unproblematic as it seems, and that the moralised conception of ‘caring’ used by Mendus does rely on some tacit egalitarian assumptions.

In section (I) I start with a short overview of impartialism in moral and political philosophy – this will provide the backdrop against which we can understand how the problem of the priority of impartial justice arises. Sections (II) and (III) outline the main steps in Mendus’s argument. In section (IV) I critically assess her argument and support my conclusion that her morally minimalist conception of ‘caring’ cannot avoid reference to the value of ‘equality’.

## **I. Impartialism in moral and political philosophy**

‘Liberal egalitarianism’ has become a commonplace phrase used to describe John Rawls’s theory of justice - as a theory inspired by the belief in the fundamental equality of human beings ‘justice as fairness’ belongs to a wider strand of theories that endorse impartiality within political philosophy.<sup>3</sup> In moral philosophy impartialism is the

---

<sup>3</sup> Rawls defines impartiality as a requirement that we judge ‘in accordance with principles without bias or prejudice ... choosing a conception of justice once and for all in an original position of equality’ (*A Theory of Justice*, p. 190). Barry (*Justice as Impartiality* (Oxford: OUP, 1995) develops a theory of justice

requirement that everyone be treated as an equal (which does not necessarily mean that it requires ‘equal treatment’). A first challenge before impartialist moral philosophy is to adequately account for the clashes that we often experience between the personal and the impartial point of view, between our partial concerns and the demands of impartial moral principles. Thus any convincing theory of moral impartialism has to take seriously the significance of our partial concerns.<sup>4</sup> A second challenge before moral impartialism is to justify the priority that impartial moral principles claim to have over our partial interests and attachments.

Political theory – in contrast to moral theory – is constrained in at least three ways: in its subject matter, in its scope, and finally – in its aim. Political theory usually engages with questions of justice (as constituting only part of morality, not the whole of it); it is concerned only with the problem of how institutions enact principles of justice (i.e. how the basic structure, to use Rawls’s term, allocates the burdens and benefits of social cooperation between individuals). Finally, political theory aims to offer a justification for political authority.<sup>5</sup>

Because of all these the challenge before impartialism in political philosophy changes in form. Political impartialism needs, first of all, to take into consideration the diversity of conceptions of the good found in modern societies. Secondly, it needs to defend the priority of impartial political principles of justice in a way that does not undermine agents’ commitment to their own (reasonable) conception of the good. Note

---

as impartiality based on epistemological scepticism; Nagel (‘Moral Conflict and Political Legitimacy’, *Philosophy and Public Affairs* 1987, 16 (3): 215 -34) argues for impartiality understood as ‘epistemological restraint’ and upholding the distinction between ‘the inside’ and ‘the outside’ point of view.

<sup>4</sup> As a matter of fact deontological impartialism is implicitly committed to the claim that our partial concerns matter. Recall that one of the most serious objections of Rawls (*Theory*, section 5) against utilitarianism has to do with the failure of the former ‘to take seriously the distinction between persons’, thus reducing impartiality to mere impersonality (see Mendus op.cit., p.7). Deontological impartialism, by contrast, claims that we treat everyone as equals when we duly take their particular individual interests into consideration. By definition free and equal moral agents will often have interests that clash with one another – in the sense of not being compossible. Impartialism will have to give equal consideration to each and come up with a principled defence of possible trade-offs.

<sup>5</sup> Mendus, op. cit., p.10-12.

that this is a different kind of challenge as it refers to a different type of conflict than the one I described above (i.e. between the first-person and third-person point of view in moral philosophy). The move from individuals' interests to individuals' conceptions of the good is a conceptual move. The conflict between the first- and the third- person point of view (as far as interests are concerned) is substantively different from the conflict between conceptions of the good and conceptions of justice:

The conflict between the things that people typically care about and the demands of impartial moral principles is between one smallish set of persons' interests or claims and the interests or claims of others"...The problem of finding impartial principles that becomes an issue under reasonable pluralism is not directly one of doing justice to different persons' interests: it is, rather, one of doing justice to different persons' views, each of which could be perfectly impartial.<sup>6</sup>

There is yet another important difference between impartialism in moral and political philosophy. The former usually differentiates between first-order and second-order impartiality, i.e. impartialism should be understood as a second-order imperative – as a set of requirements that apply to the selection of principles only, but not to the choice of day-to-day decisions (i.e. first-order impartiality is not a strict normative requirement, even if some individuals might choose to apply it to their everyday behaviour).<sup>7</sup> The above distinction therefore leaves some space for us to attend to our partial concerns within everyday decision-making contexts.<sup>8</sup> Impartialism in political philosophy is even narrower in focus than moral impartialism for it deals only with the requirements that govern our selection of principles for the basic structure of society. Impartialism in political philosophy asks us to select principles that will treat people's conceptions of the

---

<sup>6</sup> See Woodard, Book Review of *Impartiality in Moral and Political Philosophy*, *Philosophical Quarterly*, 54 (216) 2004, p. 486.

<sup>7</sup> See Barry op.cit., Mendus, op.cit. p. 55-63.

<sup>8</sup> Indeed an impartial morality that failed to acknowledge the significance of our partial attachments will be, in a very important sense, irrelevant to us as human beings – for more on this see Williams, *Moral Luck* (Cambridge: CUP 1981), Baron, 'Impartiality and Friendship' in *Ethics*, 101 (4) 1991, Barry op. cit., p. 194.

good as being of equal value; those principles should be such that they do not deliberately privilege or disadvantage any one particular conception of the good.<sup>9</sup>

As any distinction, the one between first- and second-order impartiality points to ‘demarcation’ problems: problems concerning the way in which we are to draw the line between the issues that fall under the first level, and those that fall under the second level of impartiality.<sup>10</sup> More importantly, however, the distinction between those two levels of impartiality points to the difficulty of justifying the priority of the impartial perspective in cases of conflict – i.e. cases where an agent is fully aware of the requirements of (second-order) impartiality, yet questions their normative force for her under the very specific circumstances in which she finds herself because of the very great costs on her partial concerns that they entail. In cases like that the agent is quite clear about where the line between first- and second-order impartiality passes – i.e. she is fully aware that this is a case where impartial considerations are relevant and she is also fully aware of the due demands they make on her. Yet, because of the specific weight of the agent’s partial attachment in this particular situation, she finds herself on the horns of a dilemma, torn between the requirements of impartial morality, and the demands of her partial attachment.

Thus Baron gives the example of a parent who is in a position to pull strings (should she want to) so that her child is able to queue-jump the list for a life-saving medical treatment. Baron concludes that it would look odd, to say the least, if the parent completely blocked her partial considerations and didn’t let them count in her reasoning. Such an *impartial* behaviour would be at odds with the idea most people usually have of parent-child relationships. Therefore it is more accurate to say that the parent finds herself torn between the demands of impartiality and the demands of parental love. She finds herself faced with a dilemma: either she gives in to her *partial* reasons, and feels that somehow she acted *unfairly*; or she gives in to the demands of *impartiality* and feels that she has somehow *betrayed* herself in her capacity as a parent. The dilemma faced by

---

<sup>9</sup> In Rawls’s political impartialism this requirement is cashed out in the idea that the two principles create the conditions for a fair equal opportunity for many reasonable conceptions of the good to develop.

<sup>10</sup> For a very instructive discussion of those problems, especially as they are treated in Baron op.cit. and Barry op.cit., see Mendus op.cit., p. 55-63.

this agent is one that challenges the inescapable character of moral demands: for in this case it is really difficult (for impartialism) to defend the priority of its principles over partial concerns; to defend, that is, the special status that impartial (moral) reasons claim to have over partial reasons. This particular dilemma raises a challenge to the normativity of impartial morality: the agent feels the pull of both demands and asks herself why the *moral* loss incurred by her pulling strings for her child will have greater weight than the *personal* loss she will suffer as a parent if she doesn't pull strings?

Likewise, in political philosophy, the priority of impartialist principles of justice over claims made by conceptions of the good will have to be defended when the two place conflicting demands on individuals. Why, for example, will a church agree with a state policy that forbids private associations to discriminate among job applicants on the grounds of gender and religion when they advertise employment opportunities? Or why will someone with a scarce and socially valuable talent agree to a 40% income-tax on her earnings?

The majority of contemporary liberal theorists build their theories on a conception of moral equality: such a conception plays the role of a benchmark to distinguish between reasonable and unreasonable people – i.e. the people with whom we engage when we work on producing political justifications. Susan Mendus, however, objects to the use of such egalitarian assumptions as a foundation for the justificatory discourse of contemporary liberalism. She claims that equality is a contested value and therefore *cannot* serve as a justificatory value for people divided by reasonable disagreements because equality is just one of those things over which reasonable people are in disagreement. Mendus, therefore, seeks an alternative justificatory value. Her aspiration is to provide an argument for the priority of impartial justice which uses a broader definition of reasonableness than Rawls's. In particular, she uses reasonableness as ranging over conceptions of the good that are not necessarily egalitarian. In this way she hopes to work with a more extensive definition of reasonable pluralism than Rawls. Yet, just like Rawls, she also hopes to develop a moral defence of political impartialism and one that is compatible with the permanence of reasonable pluralism.

Recall that the justificatory problem facing contemporary liberals is to offer reasons for the exercise of political power which the persons subject to it could accept.

For Mendus, a contemporary theory of political justice has to meet two important criteria: to be able to acknowledge the significance of individual belief; and following from that, to be able to accommodate the permanence of reasonable pluralism. A principled defence of political impartialism which fails to meet either of those two criteria will be to that extent, flawed as a theory for modern pluralistic societies.

## II. Arguing for the priority of impartial moral principles

Having defined the nature of impartialism in both moral and political philosophy and the challenges faced by the latter in conditions of pluralism, I can now focus on Mendus's argument. Her aim is to defend the priority of justice in a way which is 'more than a *modus vivendi* but does not require a commitment to a comprehensive conception of the good'.<sup>11</sup> She develops a complex argument, deployed in the following two stages:

1. She looks at impartialism in moral philosophy and argues that there we can find a moral but non-comprehensive defence of impartialism;
2. She applies the conclusions reached throughout stage 1) above to the case of impartialism in political philosophy.

At the first stage of her argument Mendus considers Scanlon's and Korsgaard's views on the relation between impartiality and partial attachments when the two pose clashing demands upon us. Scanlon's view is an example of a reductivist response to the problem of priority: he claims that there is continuity between the two sets of demands because friendships and other personal attachments arise out of the impartial value of equal respect for persons.<sup>12</sup> Thus partial reasons are ultimately grounded in impartial ones, and it is inaccurate use of language to speak of a moral conflict between the two sets of reasons.<sup>13</sup> Impartial reasons always have normative priority over partial ones because the latter are derived from the former.

---

<sup>11</sup> Mendus, *op.cit.* p. 63.

<sup>12</sup> See Scanlon, *What We Owe to Each Other* (London: Belknap, 1998), p. 165.

<sup>13</sup> 'The conception of friendship that we understand and have reason to value involves recognizing the moral value of friends *qua* persons, hence the moral claims of non-friends as well. No sacrifice of friendship is involved when I refuse to violate the rights of strangers in order to help my friend. Compatibility with the demands of interpersonal morality is built into the value of friendship itself' – Scanlon, *ibid.*

Korsgaard, on the other hand, claims that the language of moral conflict is relevant in situations where our partial concerns and impartial principles pull into opposite directions. This is so because friendship and impartiality point to two distinct sources of obligation for the agent - sources located in the agent's practical identity.<sup>14</sup> Unlike Scanlon, Korsgaard does not think that 'the requirements of friendship are grounded in the requirements of morality and, for this very reason, the possibility of conflict is permanent and persistent'.<sup>15</sup> Precisely because each of those conflicting obligations stem from the practical identity of the agent, it is not always clear that the impartial considerations should win over her partial attachments. Consider again the example of the child that needs life-saving treatment. As a parent I am moved to pull strings and save my child; as a moral person I realise that I would act unfairly because there are many other parents whose children need the treatment just as badly as mine. This is a case where the demands of my practical identity as a parent clash with those of my practical identity as a just person, and since this conflict is intractable, either way of resolving it would strike a blow at my practical identity. The difficulty implied in 'the identity response' for the purposes of Mendus's enterprise is that, despite its plausibility, it cannot deliver the priority of the impartial aspect of one's practical identity.

The strength of Scanlon's reductivist account is that it captures the moralised dimension of friendship and other personal attachments. To be a friend is to develop a close bond with another and to care about their interests and well-being and, on many occasions, to go out of my way to help my friends. At the same time, because friendships are able to directly motivate my friends, this puts me under an obligation to not ask them to commit acts of morally dubious nature. My friendships unfold against a moral background that requires equal respect for everyone, and my personal relationships are constrained by this moral framework. I owe respect to my friends *qua* persons and not

---

<sup>14</sup> Korsgaard, *The Sources of Normativity* (Cambridge: Cambridge University Press, 1996), p. 128: 'personal relationships, then, as a form of practical identity, are independent sources of obligation, like moral obligations in their structure, but not completely subsumed under them.'

<sup>15</sup> Mendus *ibid.* p. 67.



just because they happen to be my friends. Friendship is a value, whose status as a value cannot be fully grasped without recourse to considerations of impartial morality.<sup>16</sup>

Thus, for example, imagine that I am about to sit for a very important exam. It is important for me for many reasons: I really care about the subject, I have been working hard throughout, my future career depends crucially on the results, etc. Imagine further that my friend Rob can get access to the exam questions a day before the exam. If he gets caught, he risks getting fired (and the probability of him getting caught is 1%). I am aware of all this information. Now, if I really respect Rob, I would not ask him for the ‘favour’ of getting into the system and giving me a copy of the exam questions. First of all, I know that I would be asking him to do something that is morally dubious – i.e. cheating. Secondly, because of the directly motivating character of friendship I know that my friend would probably waive away the moral considerations against this act in this particular scenario. I know that he is very likely to do what I asked him to do, even if it involves risk for himself and is morally dubious as a ‘favour’ to begin with. Because of the directly motivating character of friendship there are favours that we can ask our friends about and ‘favours’ that we should not. This second type of ‘favours’ involves a certain sort of wrong-doing and would face our friends with moral dilemmas in which they would have to weigh our ‘friendship’ against other moral considerations.

The strength of ‘the identity account’ is that it captures truthfully the nature of personal relationships and their directly motivating character.<sup>17</sup> However, the flaw in this account, claims Mendus, lies in its assumption that whenever we are moved to disregard the requirements of impartial morality, we do so out of a desire to preserve our practical identity.<sup>18</sup> Avoiding the weaknesses of the reductivist and the identity accounts, and building on their strengths, Mendus proposes a re-interpretation of the normative

---

<sup>16</sup> See Mendus op.cit., p. 71.

<sup>17</sup> Thus Korsgaard op.cit. writes that personal relationships are ‘a reciprocal commitment on the part of two people to take one another’s views, interests and wishes into account... Personal relationships are therefore constitutive of one’s practical identity’ – p.127.

<sup>18</sup> i.e. because responding to the claims of impartial morality will incur damages to my practical identity; thus *moral dilemmas* of the type faced by the parent in the earlier example always pose a *threat* to one’s practical identity - see Mendus op.cit., p. 76 and p. 88.

questions raised by situations of moral dilemmas between our partial commitments and impartial principles. She declares that what is at stake in the debate between impartialists and their critics is not the ability of impartial morality to accommodate our partial attachments (for it obviously can do so as the distinction between first- and second-order impartiality has shown). The question rather is to account for the stronger motivational pull that our partial attachments seem to have over the requirements of impartialism in situations of moral conflict.

Mendus claims that this normative challenge for impartialism can be overcome 'by showing how impartial considerations flow from and are implied by the partial concerns we have for particular people'.<sup>19</sup> Furthermore, according to her the above claim is not underpinned by any comprehensive value. Unlike the contested value of equality, the value of 'caring about things and people' - the value of our partial attachments - is 'morally minimalist'.<sup>20</sup> The argument that Susan Mendus develops consists of the following premises:

1. Friendships and personal relationships are directly motivating for the agent – i.e. their motivational demandingness is set lower compared to that of the demands of 'strangers'.
2. Personal relationships express the value of 'caring for others'.
3. The value of 'caring for others' is 'morally minimalist', i.e. it is not contested and does not rely on comprehensive argumentation. Furthermore caring has an evaluative dimension subject to critical appraisal, our caring about persons 'implies, even if it does not entail, impartiality'.
4. Friendship and personal relationships can 'ground' impartial considerations because the value of caring for others implies a form of impartiality.<sup>21</sup>

---

<sup>19</sup> Mendus op.cit., p. 88.

<sup>20</sup> Ibid.

<sup>21</sup> Thus she says that 'even those allegedly pre-moral or non-moral concerns we have for some other people do not stand in stark opposition to impartial morality, but are explanatory of its force. They constitute the conditions under which we see the appeal of impartial morality, and it is for this reason that impartial morality should be reluctant to assert its own priority over them too categorically.' – ibid.

Mendus's plan then is to show how impartiality is 'grounded' in our partial concerns (how they can 'help morality get off the ground').<sup>22</sup> If the value of caring for particular others can indeed help to take morality off the ground, then we would have an argument which delivers the normative priority of impartiality without reliance on any comprehensive argumentation. Mendus is careful to point out that partial concerns *cannot* entail impartiality. She insists, however, that if we use our partial concerns as a starting point in our reasoning about impartiality, we can 'get morality off the ground' and recognise the normative authority of impartial principles. She claims that 'an impartialism which is grounded in what we care about can, at the very least, acknowledge some connection between what matters to me and what is morally required of me, and in this sense it will be less dysfunctional—less alienating—than a morality which marginalizes those considerations'.<sup>23</sup> Furthermore, by appealing to a morally minimalist value such as caring (recall that Mendus claimed equality to be a contested grounding for impartiality), our argumentation will be pluralism-friendly. I shall assess Mendus's argument in the next section of the article; for now, however, I will proceed with outlining her argument concerning the priority of impartial justice over conceptions of the good.

### **III. Arguing for the priority of impartial justice**

Having claimed that partial concerns do support the normative priority of impartiality in moral philosophy, Susan Mendus now turns to the original question addressed by her research: the problem of justifying the priority of impartial justice in modern conditions of persistent reasonable pluralism. To recapitulate, such a justification needs to defend the normative priority of justice in a way that will not undermine the commitments of reasonable persons to their own conceptions of the good. To do that in a manner that transcends *modus vivendi* and relies on a genuine moral agreement, such a defence will have to build on a non-comprehensive value. I have already pointed out that Mendus discards Rawls's notion of the reasonable for it draws upon the value of free and equal citizens, and equality in political theory needs to be shown, not assumed. Her ambition is

---

<sup>22</sup> Mendus op.cit., p. 93.

<sup>23</sup> Mendus, op. cit., p. 126.

to argue that the connection established between partial concerns and impartiality in the first part of her argument can be shown to obtain between conceptions of the good and impartial justice in political philosophy. If it is possible to argue that a person's good is congruent with the requirements of justice, then it would also be possible to defend the normative priority of impartial justice under conditions of reasonable pluralism.

To tackle this challenge, Mendus offers new interpretations of the idea of *congruence* between the good of an agent and justice as well as of the very notion of 'conception of the good'. She claims that there are insufficiently utilised resources within Rawls's own theory for re-interpreting congruence along non-comprehensive lines. Mendus's first task is to defend the claim that congruence is still a relevant concern in the context of the revised theory of justice against those who deny this. For example, both Brian Barry and Scanlon deny (albeit for different reasons) that congruence arises as a problem for an impartial theory of justice. Mendus claims that they both are wrong in drawing this conclusion. Barry questions the very need for congruence because he relies on a misguided conception about an agent's good.<sup>24</sup> Scanlon, on the other hand, denies that congruence arises as an issue simply because he insists that partial attachments are framed by the requirements of impartial morality. Barry's error is to assume that people's conceptions of the good are immutably fixed and clearly outlined (so that we are able to hold in clear sight our interests and judge how they will be affected by our actions at every single time-slice). He is thus led to believe that congruence will translate into the mere continuity between my determinate, clear-cut interests and the claims of justice. Mendus challenges Barry's conception of a person's good and argues that our lives, rather than following a clearly definable path, a 'path that forks' every time we make a decision, are in fact more malleable and subject to constant change. Our interests are not fixed once and for all, and they definitely do not contain an exhaustive and clearly defined set of objectives that we pursue relentlessly throughout our lives. On the contrary, the commitments that we take throughout our lives in fact transform our goals all the time. Consequently, our 'good' should be perceived in terms of a set of interests that are being transformed all the time by every new commitment that we take. Our lives

---

<sup>24</sup> Barry op.cit.

do not unfold according to a fixed plan determined on the basis of our ‘existing desires and objective interests’.<sup>25</sup>

Barry’s objections to the plausibility of finding congruence between agents’ good and justice alert us, according to Mendus, to two potential pitfalls. The first one occurs when we perceive congruence - just like Barry does – as ‘ranging over individual acts’.<sup>26</sup> The second one occurs when we take congruence to be ranging over the sense of justice - for then we shall have to judge if ‘having the disposition to act justly is consonant with our own good’.<sup>27</sup> Making such a judgement will inevitably involve us into comprehensive arguments about the agent’s good. Mendus concludes that the real challenge is to define congruence as ranging over the sense of justice (rather than over individual acts) but define it in a way ‘which does not imply a doctrine of the real or true self, distinct from, and in conflict with, the desires and preferences of the agent’.<sup>28</sup> How can congruence be defended without recourse to a comprehensive value about what is objectively good for the agent to do or pursue in life? Mendus claims that this is possible if we leave it up to agents themselves to decide on what constitutes their good. The argument for congruence thus would not work unless we show some ‘concern for ourselves’ and our goals, and the values that underpin them. A possible non-comprehensive defence of congruence can be drawn from an analogy used by Rawls in the early *Theory* – an analogy between love and justice, where Rawls calls justice ‘a special case of love’.<sup>29</sup>

Mendus believes that this analogy can shed light on the relation between our sense of justice and our good. For one, Rawls’s analogy shows some of the limitations of the Kantian claim about the separateness of persons.<sup>30</sup> Close relationships – like love or friendship – are of course based on the sharing of interests, values and goals. However *sharing* in this context amounts to something more than summing up the separate

---

<sup>25</sup> Mendus, ‘The Importance of Love in Rawls’s Theory of Justice’, p. 70.

<sup>26</sup> Mendus, *Impartiality in Moral and Political Philosophy*, p. 138.

<sup>27</sup> Mendus, *ibid.*

<sup>28</sup> Mendus *ibid.*

<sup>29</sup> Mendus *op.cit.* p. 146.

<sup>30</sup> i.e. it questions the belief that the separateness of persons implies that we can never share goals or hold together a good in common that we did not hold individually – see Mendus *op.cit.*, p. 143-147.

interests of the individuals involved. In close relationships, we create a *common good* that has not existed prior to the relationship, and one that we could not have known on our own. At the basis of our close relationships is such a commonly held good that we create once we step into the relationship. We try to nurture it all the time in good faith that it will develop well and that we shall continue to enjoy it. However, as with all projects, there is no guarantee of success. Despite our best attempts a frail good such as love or friendship is constantly exposed to risks, and in the end can fail to fare well. We are aware of this possibility all the time; we know that there is always a chance of disappointment or of getting hurt – but nonetheless we do not think that this is a good reason to let go of our commitment and good faith.

Mendus says that just like in love there is no guarantee that we would not suffer disappointment or loss, or would not get hurt, so it is with our sense of justice – there is no guarantee that developing a disposition towards justice would not sometimes bring us sacrifices or pain. The important thing, however is that despite our awareness of possible risks, we step in truly committed to our shared good, because we believe that despite all risks, it is a good worth-pursuing. The analogy can be extended to justice, claims Mendus. When we act out of our sense of justice, we do so without any expectation that each one of our acts will bring us reward all the time. Justice is a good that we can only hold in common and, therefore potential risks should not discourage us from upholding it and being motivated by it. The congruence of our sense of justice can then only be assessed with reference to the *shared good* that being engaged in a fair scheme of social cooperation with others brings us. If we are motivated to take up the point of view of justice, we do so fully aware of the potential risks we might endure, and with no expectation that each of our justice-motivated acts would be rewarded.

Mendus does not explain any further why we would consider justice a shared good that is so worthy-pursuing. The analogy between love and justice does not state clearly what it is about justice that is so valuable and worth the risk. Mendus is right to point out that, like love, justice is a shared good that we can only know in common, and not alone. However her analogy needs an additional argument in order to explain what is so valuable about the shared good of justice, so that it motivates us to pursue a scheme of social cooperation with the aim of creating such a shared good. In the final section of the

paper I will suggest that one possible answer to the above question about the value of justice can be sought in the status that it gives to persons who participate in a just scheme of social cooperation. If we conceive of persons as caring about this particular status conferred upon them by justice, then we can assume that they would be motivated to pursue the shared good of justice together with other, like-minded individuals. This particular status delivered by justice could be a reason that would motivate individuals to seek justice despite the sacrifices and uncertainties implicit in this pursuit.

Having redefined the notions of an agent's good and congruence, and also having shown how, using the analogy with love, justice can be seen as congruent with our good, Mendus develops her argument for the priority of impartial justice over conceptions of the good. Recall that Rawls assumed that comprehensive doctrines can find their own particular (comprehensively moral) reasons for upholding 'justice as fairness' – thus there will be many roads to impartiality, all of them underwritten by a particular comprehensive value. Mendus, in contrast, claims that there can be one non-comprehensive value that can ground our commitment to justice: the value of 'caring' about our partial attachments. Even if caring and morality have different sources, there are connections between the two. One such interesting connection that Mendus takes up to explore is the possibility to care about morality itself.<sup>31</sup> Her argument relies on the following two claims:

1. Caring is at the basis of almost all of our partial commitments: caring (about things or people), furthermore, is subject to critical appraisal against a relevant evaluative framework. Caring is essentially 'a matter of our relationship with ourselves'.<sup>32</sup> It underlies an ideal of personal integrity that we care about and one we want to live up to.
2. Morality is a matter of our relationship with others; therefore it should be able to acknowledge both our partial concerns (the things we care about) as well as the *status* of other agents as *caring* (i.e. to recognise the same capacity in other agents).

---

<sup>31</sup> Mendus op.cit., p. 156.

<sup>32</sup> Frankfurt, *The Importance of What We Care About* (Cambridge: CUP 1988), p. 104.

When we ground impartial morality in the things we care about, we are able to respond to the normative question and also show how morality is congruent with the agent's good.<sup>33</sup> Furthermore, we can apply those insights to the problem of justifying the normative priority of impartial justice over conceptions of the good. Recall also that Mendus's ambition is to defend this priority in a way that is moral, but non-comprehensively so. The moral component in her defence is provided by the moralised conception of caring she uses. The non-comprehensive component is delivered through her reliance on the partial concerns people have.<sup>34</sup> Mendus's conclusion is that 'the permanence of pluralism and the priority of justice can [...] be reconciled in a form of impartialism which has partial concerns at its foundations'.<sup>35</sup>

#### **IV. Assessing Mendus's argument**

In this final section I address some of, what I believe, to be potential weak points in Susan Mendus' argument (at least in its part on impartial justice). I will take on board her criticisms of Rawls's theory and attempt to reconstruct his argument.

I will start by her claim that the thesis about epistemic abstinence can only defend the permanence of pluralism, but not the priority of impartial justice. Recall that Rawls argues for epistemic abstinence as a standard for justifying conceptions of justice; his argument is that the coercive acts of the government should always be justified in terms of public reasons. Mendus thinks that epistemic abstinence is a good device to accommodate the fact of persistent pluralism. However, to the extent that the method of epistemic abstinence relies on epistemological premises only, it fails to deliver a principled defence of toleration as a requirement of justice. As I have pointed out, Mendus argues that the claim that individual belief matters has a moral component to it,

---

<sup>33</sup> Mendus op.cit. p. 158.

<sup>34</sup> Thus she says, 'although that defence takes the form of an appeal to partial concerns, it need not involve commitment to a specific comprehensive conception of the good, and can therefore acknowledge pluralism about the good as permanent. The things that people care about are many and various, and not all will be consonant with the principles of impartialist political philosophy.

<sup>35</sup> Mendus op.cit., p. 163.



and not just an epistemological one. Otherwise the value of toleration could not be secured; or, at best, it would rest on rather shaky grounds.

I believe that Mendus's account misrepresents Rawls's take on epistemic abstinence. It does so because it portrays the latter as the normative approach that we take with regard to the diversity of values and ways of life in modern societies. The method of epistemic abstinence as a method of justification, however, is only used once we define our constituency of justification. The people we address are reasonable people – and not everyone in a pluralistic modern society. Mendus seems to downplay the fact that the notion of reasonableness plays an important normative role in political liberalism: its primary function is to deliver the principled defence of toleration as a requirement of justice that Mendus has in mind. Epistemic abstinence as a justificatory strategy is used only once we have defined reasonableness as our normative criterion for selecting the tolerant from the intolerant people. More precisely, the normative criteria for discerning between the tolerant and the intolerant are developed by Rawls's account of 'the burdens of judgement'. The latter specifies under what conditions epistemic abstinence would be the appropriate response to dealing with disagreement; but epistemic abstinence has no role to play in defining those conditions. Those conditions are specified through the use of moral arguments.

In another paper I have claimed that those moral arguments in Rawls's thesis about 'the burdens of judgement' could be further elaborated and that the link between freedom of thought and respect for people's deliberations could be articulated in a more forceful way.<sup>36</sup> I believe that if this is done, we shall be able to discern between two notions of belief. One notion will refer to beliefs open to rational criticism on purely epistemological grounds; the other notion will refer to beliefs that are not open to criticism on epistemological grounds, even if they might be open to questioning on moral grounds. Mendus criticised the Rawlsian method of epistemic abstinence on the grounds that it is incompatible with the demand that justice be given priority in cases where it

---

<sup>36</sup> In Chapter 2 of my doctoral thesis I develop an argument articulated by Gerald Gaus according to which freedom of thought gives a special 'moral-epistemic status' to some of our claims. Because of the significance of freedom of thought, some of our normative claims can sometimes be epistemically opaque, yet justified. This is so because freedom of thought allows us to be 'producers of beliefs', and as producers of beliefs we acquire some special epistemic-moral rights over some of our claims. Gaus's argument is derived from some minimal assumptions about the nature of moral reasoning.

clashes with the demands of comprehensive conceptions of the good because the concept of belief used by the idea of epistemic abstinence is also ‘a concept of belief that undermines the priority of justice’.<sup>37</sup>

My counter-argument is that Mendus fails to distinguish between those two types of belief that can underwrite the notion of pluralism. This leads her to collapse the distinction between *pluralism* and the mere *plurality* of beliefs, and to the assumption that it is the latter that forms the normatively significant fact that contemporary political theories have to take into consideration. In fact, however, Mendus herself is tacitly committed to the distinction between beliefs that are normatively significant and those that are not. She herself insists that ‘the claim that ‘belief matters’ must have a moral component if it is to do the work required of it, and the work required of it is to show when and why we are entitled to use the coercive power of the state to force people to do things they do not believe in’.<sup>38</sup> The notion of belief implied by the burdens of judgement indicates that *reasonable* beliefs are beliefs beyond a certain normative threshold. The notion of belief at the basis of the epistemic abstinence approach is thus the notion of *reasonable* belief, not just of any belief. By ignoring the normative work performed by the notion of reasonableness in Rawls<sup>39</sup>, Mendus fails to acknowledge that the method of epistemic abstinence addresses only those agents who are motivated to find agreement on fair principles to regulate their institutions. Reasonableness, and especially its component about the burdens of judgement, point to the beliefs that are normatively significant for a political theory. Because those beliefs express the value of respect for people’s deliberations, the most appropriate way of approaching them is to be epistemically abstinent about their truth.

Perhaps, however, Mendus disagrees with the tacit egalitarian implications of a notion such as reasonableness. Rawls’s reasonable people are those who are already committed to the value of equality in one form or another. Mendus, though, wants to offer a defence of impartial justice able to speak even to those who find equality a contested concept. As she reminds us throughout her book, equality in political

---

<sup>37</sup> Mendus, op.cit., p.18.

<sup>38</sup> Mendus, op. cit. p. 41

<sup>39</sup> i.e. the work of narrowing down the constituency of justification

philosophy always needs to be demonstrated and, never – assumed. It is not clear, however, how her moralised conceptions of caring and partial attachments do not implicitly rely on the value of equal respect for persons. Mendus argues that because close relationships are directly motivating, we should always think carefully about the demands we make on our friends or loved ones. Implicit in her account is the idea that an abusive relationship, or a friendship where we are emotionally blackmailed or continuously asked to engage in morally dubious acts – all fail in some sense the idea of parenthood, love or friendship. We always evaluate our close relationships against the background of ideas of equality and respect for persons. But why is this evaluative background less controversial than the evaluative framework suggested by Rawls’s idea of the reasonable? Perhaps Mendus’s emphasis is on the agent herself: what matters is that *I* accept those values (of respect, equality, etc) and want to regulate my behaviour according to them (including my behaviour in my close relationships with others). My choices and decisions therefore are informed by values that *I* always hold up to critical scrutiny. But why is that particular conception of agency less comprehensive than the one implied by the ideal of a reasonable citizen?

A second issue in Mendus’s argument to which I now turn concerns her treatment of conceptions of the good. As one reviewer has noted, the conflict between partial attachments and impartial morality is conceptually different than the one between conceptions of the good and impartial justice.<sup>40</sup> For one, conceptions of the good contain moral values and ideas about treating others (both close and distant ones) and not just about one’s very close and personal relationships, objects of care, etc. Then, there are also conceptions of the good that are themselves centred around the value of impartiality (utilitarians for example). Perhaps what matters for Mendus is that since those views, values, etc. are the outcome of my personal critical choice, then they are able to motivate me directly – I am personally attached to them. But then her account will get closer and closer to Rawls’s claim that the reason why we respect reasonable people and their conceptions of the good is because they came to hold those as a result of their sincere and

---

<sup>40</sup> See Woodward op.cit., p. 486.

conscientious reasoning (i.e. they are reasonable persons who acknowledge ‘the burdens of judgement’ and the outcomes of freedom of thought).

In political philosophy, as Woodward pointed out, we try to pay due respect to people’s views as exemplified by their conceptions of the good. Rawls’s theory defines the benchmark for this appraisal via the notion of reasonableness. Mendus seems to argue that this benchmark is set by impartial principles but that we cannot defend the benchmark by invoking the value of equality. Instead we should defend it via recourse to the significance that our partial concerns have for us, and through the ways in which they give rise to impartial considerations.

A possible objection to my comments so far is that I am misreading Mendus. Her ambition is to defend the normative priority of impartial justice – which is a different enterprise than the one pursued by Rawls. Rawls’s ambition is to defend a conception of *liberal egalitarian* justice which explains why he deliberately constrains the agents addressed in the theory. What Mendus fails to take into account is that Rawls wants to show that even among people who accept the value of equality, disagreements about how it can be best translated into constitutional frameworks will persist. Mendus’s project, however, questions the agreement over an *egalitarian* conception of justice assumed by Rawls’s theory. Her claim is that there are disagreements over the value of equality and that because of this the latter cannot be used as a justificatory value. I need to clarify that Mendus does not want to argue against equality; on the contrary, she wants to find a different justificatory route for arguing in favour of an impartialist conception of justice. Her claim is that there is continuity between the value of caring and the value of equality, and that this connection should be used in order to build a normative defence of impartiality which would be less motivationally demanding than a defence based on the value of equality. Mendus’s argument seeks to show that our ‘caring’ for particular others can be extrapolated to the political realm and help us understand our relation to our fellow citizens in terms of ‘caring’ about a good that we can know only together – the shared good of justice.

My main objection to Mendus’s argument is that it relies on some tacit egalitarian assumptions. It is the latter that do the major normative work, and not the value of ‘caring’, as Mendus contends. Her analogy between love and justice cannot explain why

we should value justice the way we value personal relationships. My suggestion is that she needs to provide a separate argument to account for justice as a value that is able to motivate us. I claimed that one possible line of argumentation could pick on the special status that the shared good of justice bestows on us. Thus a possible motive for us to enter a social cooperation scheme guided by the idea of justice is that as participants in such a scheme we acquire an equal status (with some accompanying rights and freedoms) and this status is publicly recognised by everyone. Acquiring such a status is supportive of our self-respect, which in turn enables us to pursue the projects that we deem worthwhile.<sup>41</sup>

I agree with Mendus that political justification in modern conditions of pluralism inevitably raises important motivational questions. She presents some very fine and tightly argued claims about the relation between our partial concerns for particular others and our concern with impartial principles of justice. I think that her analogy between love and justice has some very important implications for the research of the motivational questions related to justice. In particular, her argument that we can extrapolate the understanding of a ‘common good’ found in relationships of love and friendship to the realm of justice and our relationships to our fellow citizens, can be very useful, I believe, to the project of political liberalism. My only objection is that this argument needs further elaboration in order to provide the principled defence of political impartialism that Mendus wants to achieve.

## **Conclusion**

In this paper I addressed an important question for contemporary liberal theories of justice: their argumentation as to why impartial justice should take priority over our partial concerns. The fact of reasonable pluralism sets up a normative challenge before impartialist theories of justice – they have to defend the normative priority of justice over conceptions of the good in a way that provides a moral but non-comprehensive defence of impartiality.

---

<sup>41</sup> I explore this idea in more detail in another paper: there I examine a theory that uses this idea of self-respect as the principal justificatory idea for a political conception of justice

Susan Mendus's response to the above normative challenge is to offer an account about the congruence between justice and our good that does not rely on contested comprehensive values. Her account builds on the idea that our partial concerns for particular others can 'ground' impartial principles of justice and help to 'take impartial morality off the ground'.<sup>42</sup> Mendus resorts to an overlooked resource within Rawls's original theory: his analogy between love and justice. Using this analogy, Mendus claims that we can extrapolate the understanding of a 'common good' found in relationships of love and friendship to the realm of justice and our relationships to our fellow citizens. If personal relationships are 'directly motivating' for the agent and, if justice creates a shared good analogous to the common good created through personal relationships, then justice can become just as 'directly motivating' for the agent as her partial commitments are. In a nutshell, Mendus's aim has been to examine how the priority of impartial justice can be defended in a way that does not undermine either the permanence of pluralism or the significance of individual belief.

My objection to her account has been that it relies on some tacit egalitarian assumptions. It is those assumptions, and not the value of 'caring', that do the normative work in Mendus's argument – and this is precisely what she wanted to avoid. I have concluded that, consequently, Mendus's alternative account about the congruence between justice and a person's good cannot avoid relying on the value of equality.

**Mihaela Georgieva**

**Bibliography:**

1. Baron, Marcia. 'Impartiality and Friendship' in *Ethics*, (1991), 101 (4): 836-57.
2. Barry, B. 'John Rawls and the Search for Stability' in *Ethics*, (1995), 105: 874-915.
3. Barry, B. *Justice as Impartiality*, Oxford: Oxford University Press 1995.

---

<sup>42</sup> See Mendus, 'The Importance of Love in Rawls's Theory of Justice'

4. Dworkin, Ronald. *Taking Rights Seriously*, Cambridge: Harvard University Press, 1977.
5. Frankfurt, Harry, *The Importance of What We Care About*. Cambridge: Cambridge University Press, 1988.
6. Gaus, Gerald, 'Liberal Neutrality: A Compelling and Radical Principle' available online at <http://www.ppe-journal.org/Gaus/gaus.htm>
7. Korsgaard, Christine, *The Sources of Normativity*, Cambridge: Cambridge University Press, 1996.
8. Mendus, Susan, 'The Importance of Love in Rawls's Theory of Justice' in *British Journal of Political Science*, (1999), 29: 57-75.
9. Mendus, Susan, *Impartiality in Moral and Political Philosophy*, Oxford: Oxford University Press, 2002.
10. Nagel, T., *The Possibility of Altruism*, Princeton: Princeton University Press, 1978.
11. Rawls, John. *A Theory of Justice*. London: Oxford University Press, 1973.
12. Rawls, John, *Political Liberalism*, New York: Columbia University Press, 1993.
13. Scanlon, T. M. *What We Owe to Each Other*, London: Belknap, 1998.
14. Williams, Bernard. *Moral Luck*. Cambridge: Cambridge University Press, 1981.
15. Woodward, Christopher. Book review of *Impartiality in Moral and Political Philosophy* by Susan Mendus, *Philosophical Quarterly* 54 (216) 2004, pp.484–487.