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The Centrality of Equality in Normative Political Philosophy

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Abstract

The paper intends to propose an elaboration of basics for theories on inequalities, on the basis of equality as a central concern. In the first part we discuss the extent to which Rawls's contribution is a breakthrough in the theories of justice, against utilitarianism. His *Theory of Justice* raises a number of debates on the nature of equality. In the second part together with a conflict that may appear between equality and basically non egalitarian values we discuss Ronald Dworkin's and Amartya Sen's contributions on the issue of what is to be equalized, among various candidates. In the third part, we will discuss G.A. Cohen's contribution. His internal critique of Rawls's theory is methodological rather than substantial, and is mainly related to the implementation of equality and to the way equality is to be applied.

Mots clés : Equality, welfare, resources, capabilities, basic structure

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THE CENTRALITY OF EQUALITY IN NORMATIVE POLITICAL PHILOSOPHY*

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Résumé : L'article propose une réflexion sur la construction de fondements pour une théorie portant sur les inégalités, avec l'égalité pour préoccupation centrale. Nous discutons dans un premier temps la mesure dans laquelle la contribution de John Rawls constitue une révolution dans les théories de la justice. Sa *Théorie de la justice* soulève un certain nombre de discussions sur la nature de l'égalité. Dans un deuxième temps, dans le contexte d'un éventuel conflit entre l'égalité et des valeurs fondamentalement non égalitaires, nous discutons les contributions de Ronald Dworkin et d'Amartya Sen sur la question de ce qui doit être égalisé, parmi un certain nombre de candidats. Dans une troisième partie, nous discutons la contribution de G.A. Cohen. Sa critique interne de la théorie de Rawls est d'ordre plutôt méthodologique ; elle porte principalement sur la mise en œuvre de l'égalité et sur l'objet auquel l'égalité doit s'appliquer.

Mots-clé : Égalité, bien-être, ressources, capacité, structure de base

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With the publication of *Theory of Justice* in 1971 the issue of equality came about in political philosophy, and it is discussed as corresponding to an objective of equity. In integrating equity in political philosophy through principles of justice, which leads to the discussion of some equality, his can be seen as an alternative to the utilitarian approach (see Mill, 1863; Sidgwick, 1874; Harsanyi, 1955)¹. As a standard for equity, Rawls has chosen primary goods, which he sees as a better correspondence to what is a good life, but also as a good candidate for avoiding some of the problems of utilitarianism. A difficulty appears when some conflict is going on between equality and alternative values that are intrinsically non-egalitarian, like family for example. For Rawls, justice should appear – and be applied – at three levels: (i) the regularity and the application of rules, (ii) the issue of basic rights and (iii) the equality of rights. As a result, every individual or every human group can be considered as a moral subject and, as such, is entitled to an equal justice. Undeniably, such an approach needs the specification of a more precise interpretation of the issues, which are at stake in the debate on the scope of equality. As a matter of fact, equality appears to be at the core of the debate and the basic question that will be discussed here is whether something has to be equalized and how that should be done. Rawls proposes well-being as a standard, which is measured, as we saw with a bundle of primary goods, but critiques rapidly appeared² on the nature of what to be equalized – well-being and primary goods are not necessarily the best qualified for equality – and a discussion started on the nature of the standard for equality: what is the item that should equal so that we have a fair theory of justice (1). Alternatives were proposed as an alternative for primary goods, which are resources (Dworkin) that are supposed to integrate individual responsibility and capabilities (Sen), which accounts to what are the effects of the goods on the persons (2). Another kind of critique is not on the substance of the theory but on the method. While Dworkin and Sen accept the essential tenets of the theory and discuss how it could be implemented, Cohen proposes that the difficulties in Rawls's theory are based on the fact its central devices are not solid enough to offer a high quality theory. Both the basic structure and the difference principle are criticized (3).

1. The need of a standard for equality

If we select equality as a standard for political philosophy and for welfare economics, we also need a theory to propose some interpretation of what we mean by equality. Within an egalitarian approach, a basic intuition suggests the necessity to get closer to a situation such that all individuals enjoy an equal level of well-being, in terms of a Pareto-optimality³, so that a distribution is such that any other distribution would decrease the level of well-being of at least one person. This refers to John Rawls's theory⁴. Rawls suggested well-being, but it appears that equality needs more specification (1.1) and that Rawls's proposal for well-being has led a certain number of critiques on well-being and primary goods (1.2).

1 It might be the case that some sophisticated interpretation of utilitarianism endorses some equity but basic utilitarianism is interested neither with equity nor with any kind of equality.

2 Amartya Sen and Ronald Dworkin's critiques will be discussed here.

3 The difference principle can be presented in such a way that if inequalities are acceptable at two conditions: (i) equality is Pareto-inferior; (ii) the inequalities allow an improvement of the situation of the least off.

4 Rawls defends equality of well-being except if inequalities are favorable to the least off (difference principle).

1.1. The choice of equality

Equality is such an important that he may have a certain number of meanings. We propose here, with Rawls, that he can be used as the main standard for judgment, together with liberty (1.1.1), which leads to articulate the debate around the nature of the standard or of the set of standards to be equalized (1.1.2).

1.1.1. Equality as a standard for judgment

Traditionally, left political philosophy is supposed to be associated with equality and socialism, and right political philosophy from the right is supposed to be associated with liberty and capitalism. Political philosophy from the center is then supposed to be associated with a mix of some degree of liberty and some degree of equality, which means endorsing capitalism, but associated with welfare state. Therefore the issue of liberty, associated with capitalism, and the issue of equality associated with socialism, are considered as ultimate issues and are supposed to be necessarily contradictory, since the reinforcement of one of them would necessarily lead to weaken the other. Equality would put constraints on liberty, while liberty could only be obtained in reducing equality. It appears to us that such an approach is basically not operative, because liberty and equality are not necessarily contradictory to, and also because other alternative values could be selected as ultimate values, like utility for the utilitarians, rights for Dworkin, self-ownership for the libertarians... – all of them being more or less related with equality and/or liberty.

In refusing such an opposition between equality and liberty, Ronald Dworkin (1986) proposed the claim that most theories in political philosophy share equality as an ultimate value, in the sense of the imperative that all human beings must be treated as equals – even if not necessarily equals in terms of material wealth, in terms of well-being... but equal in something. Even if it appears that few political theories cannot be seen as conceptions of equality, like racist political theories that can easily be excluded, Dworkin proposes the view that most political theories can be presented, to some extent, as conceptions of equality.

Therefore this means that we have to discuss what is equality, as an abstract ideal, to be achieved, and in that view many interpretations of equality are available. We can claim here that political philosophy shifted from an interrogation on the acceptability of equality as a basic value to an interrogation on the interpretation to be given to such a value. We think possible and necessary to propose a rational solution to the controversies between theories of justice, as far as each of them rests on a specific egalitarian foundation. Then it appears clearly that an objective of the theoretical confrontation is to evaluate how much the various arguments on equality are consistent.

Therefore we wonder here what egalitarianism is as a defense of equality – in itself, and not in opposition with liberty – and we can first provide an answer by default on what egalitarianism is not: egalitarianism is not based on a single principle of equality. More precisely, egalitarianism is not necessarily a belief in equality, but rather is articulated with the confrontations of various conceptions that are related with the issue of equality, so that it is possible to display various items, as principles that need to be equalized for a society to be just (or fair). Such item can be the income, the rights, the liberty, the fulfillment of needs – basic needs or all needs –, the social status... In front of the theoretical difficulties of prioritizing a specific value over the others – in the sense that such an approach would lead to

resort to subjective and potentially arbitrary appreciations –, we propose that it would not be fair to defend a theory of justice, that is one with only a standard for equality – “*to subordinate all other values to a single overriding one seems almost fanatical*” (Kymlicka, 1990: 3). Therefore, the basic aim of political philosophy would be to display the rules that allow settling between various political values, which necessarily leads to compromises, since it appears then absolutely impossible to get any fully adequate theory of justice, due to the complexity of social relations.

1.1.2. Equality of what?

As we discussed previously, we could claim that egalitarian political philosophy rests on a decisive principle – even if it is not a single principle – which means a fundamental principle upon which all other principles would depend more or less extensively. In other words, without denying the importance of alternative values, we could say here that some principles of equality have more explanatory weight than others. Still, the context changes sufficiently often that giving a hierarchical order to principles can amount to some kind of arbitrary power. For the same kind of reason, egalitarianism as a doctrine is neither immovable nor timeless, and then insensitive to all kinds of changes. On the contrary, principles to equalize are submitted to variable circumstances, and it sounds us likely that any stage of (historical, economic, social...) development allows different types of standards that may apply for equality. Besides, equality can wear various logical forms. It can amount to the equal division of a particular good, to the rejection of some (or all) forms of discrimination, to the assignment of universal rights, or to the distribution of some good in order to get closer to equality. This corresponds to a pluralist approach, and it is included in a theory of social justice, which can integrate competing conceptions of equality.

Basically, egalitarian authors – and beyond – agree that something should be equalized. The discussion on the identity of what should be equalized became central in normative political philosophy running on from 1979 Sen’s seminar “Equality of What?”⁵. The basic issue amounts to wonder if, among what individuals (or groups of individuals) have or may have, a special thing (or a set of things) should be considered as fundamental, that is something that can be used as a standard for measuring equality, in the sense that there is something that must be distributed equally for a society to be considered as just. Without providing a precise statement of the equality that we are willing – which implies an analysis of the various conceptions of equality – the concept would keep mysterious.

A basic intuition of the egalitarian approach would amount to the suppression of both

- (1) Exploitation (i) in the moral sense of the extraction of an unjust advantage on a person or a group of persons and (ii) in the sense of a deprivation of freedom, and of
- (2) Brute luck: it is brute in the sense (i) that it does not stem from a game or from a risk that could have been avoided and (ii) that it relates to non-intentional situations.

In order to get a better understanding of what a just equality means, it seems necessary to us that a distinction should be made between what is a matter of choice and what is a matter of circumstances, that is between choice and non-choice, which is what makes the difference between a person and the circumstances. More precisely, this means two things

5 Tanner Lectures, 22nd May 1979, University of Stanford (Sen, 1980). This can be taken as the first explicit expression of a debate that was already going on.

- (1) Tastes and ambitions can be attributed to the person, without ignoring the fact that some of them are explained by circumstances, but people can personally act on them.
- (2) Physical and mental powers have to do with circumstances that are for the most part non-chosen by the persons.

After Rawls, who did not explicitly make such a distinction, egalitarian philosophers and social scientists agree that inequalities that are related to non chosen circumstances should be compensated. Nevertheless, no consensus emerged on the nature of what should be equalized. It appears that an important number of standards can be used – and have already been used as a norm for equalization – and it seems to us that the literature in political philosophy displays three major candidates: well-being, resources (or opportunity for welfare) and capabilities.

1.2. The difficulty of estimating well-being

Yet, what we mean by well-being can be so multiple that precisions must be given. It is also difficult to determine if well-being wears an objective character or a subjective character, a question to which John Rawls answers in proposing the primary goods as an objective standard for measuring well-being, and to which Ronald Dworkin answers that well-being poses a problem in terms of insufficient stability in terms of objectivity and subjectivity (1.2.1). Amartya Sen protests against the possibility of an objectification, he stands that well-being is necessarily subjective, so that it cannot be used as a standard for equality (1.2.2.).

1.2.1. The unstable character of well-being

A difficulty appears when well-being must be specified as corresponding to the subjectivity of the persons who are concerned, that is their preferences, or to their objective endowment. Ronald Dworkin (1981a) proposes to specify three groups of theories of well-being (the first two are subjective and the third one is objective), all of them having some difficulties:

(1) The success theories

The well-being of a person depends on his/her success in achieving his/her objectives and ambitions and in maximizing his/her preferences. As a result, the resources should be distributed in such a way that all have the same success regarding their objectives and preferences. There can be three kinds of success, ranked in decreasing importance for equality

- (a) *Personal success*: refers to the distribution of goods, resources and opportunities regarding the situation and the experience of the person himself/herself,

Equality of personal success can refer to *relative* success or to *general* success

Relative success is subjective. It refers to success in one or several parts of life, like having a specific job, identifying to some groups, having some kind of friendship/love... Here equality refers to what the persons think is essential for themselves. Then the resources should be distributed in such a way that each individual has the same probability of success.

General success can be objective or subjective. It refers to a whole life, and a difference should be made between what a person thinks of his/her general success – which depends on

his/her personal convictions on what is valuable in life – AND what can be an objective evaluation of the general success of a person

- (b) *Impersonal success*: refers to the distribution of goods, resources and opportunities for things and persons that do not concern him/her personally, like science, esthetics...

The problem here is that such preferences have no reason to be reasonable. For instance, a person whose impersonal preference is that human beings themselves (that is without a plane) could fly has less chance to be satisfied than a person whose impersonal preference is that a remedy is found against cancer, since the latter is much more likely. Therefore it might be difficult or even impossible to equalize these preferences.

- (c) *Political success*: distribution of goods, resources and opportunities within the community

They can be *formal* (for example preference for distribution according to needs) or *informal* (for example a personal sympathy for a candidate). Equalizing such preferences would amount to transfer more to persons whose political preference is rejected. It is obviously a problem, for example it would mean that persons who are racist, or who get pleasure in discriminating other people, should be compensated in a society in which Black people can reach the same social positions than White people.

It appears that success theories would be more efficient if they only refer to personal preferences, since compensating inequalities in impersonal and political preferences would lead to important contradictions.

(2) *The conscious state theories*

Individuals should be as equal as possible in some or all parts of their *conscious* life. This corresponds to a balance between pleasure and pain, and equality of distribution would correspond to equality in the balance between pleasure and pain, or between enjoyment and dissatisfaction, that is between desirable conscious states and non-desirable conscious states. The resources should then be distributed in such a way that people are equal in their balance between enjoyment and dissatisfaction – that is in their relative enjoyment.

A few problems appear:

- (i) People give different degrees of importance to different conscious states, so that they can be equal on some issues and unequal on other issues.
- (ii) Enjoyment is not the only thing that a people search in life and a good life is not necessarily a life with maximum enjoyment.
- (iii) Various persons may look for enjoyment at different degrees

Subjective theories ('success' and 'conscious states') raise some problems. It might be the case that

- the well-being of a person does not only depend on the achievement of his/her preferences or on his/her enjoyment

- distributional equality does not have to do with equality of success or equality of enjoyment
- equality of success does not correspond to equality of well-being

A solution would be to propose a combination of all these theories.

(3) *Objective theories of well-being*

The advantage of objective theories is that they do not have to interfere in people's autonomy. Nevertheless, it appears that well-being is subjective in itself and that some objective standard must be used for an objective measure of well-being. Here equality of well-being should refer to the amount of resources and opportunities that are attributed to the persons, independently from what they want. Well-being is only measured in terms of resources. The question here is what counts as resource and how the equality of resources is measured⁶.

In this respect, John Rawls considers well-being as non operative in itself since it is too much subjective. He proposes the notion of "good life" for an objective assessment of well-being, and he evaluates it with the possession of primary goods, which are distinguished between social primary goods and natural primary goods. This amounts to giving up the concept of individual preferences and to defining well-being in terms of access to primary goods. Social primary goods are social because institutions distribute them. Natural primary are natural because they correspond to the nature of each individual: they include natural abilities, intelligence... Rawls concentrates on social primary goods, because he judges that natural inequalities should not have an influence on the distribution of social resources. According to Rawls, justice is not about inequalities related to birth situations; it is about the way that institutions treat such inequalities.

1.2.2. *Sen's critiques on well-being*

We saw that a subjective standard well-being may be hedonistic well-being, which amounts to a desirable or considerable state of consciousness, or to well-being in the sense of the satisfaction of the preferences. Such distinction amounts to the distinction between 'being happy' and 'achieving one's own desires' (see Dworkin 1981b). In a further specification, Sen proposes to discuss the moral perspective of the individuals under two aspects: well-being and action. He proposes three alternative interpretations that can be associated with utility: happiness, fulfillment of desires and choice. For Sen (1985b), the approach in terms of happiness raises two basic problems in terms of the measurement of well-being. On the one hand, it might be the case that a mental state ignores the other aspects of a person that can be as important for well-being. On the other hand, such an approach does not properly report other mental activities, so that happiness, even if it seems straightforward, does not allow an adequate representation of well-being.

Against the proposition for equalizing well-being, at least three objections can be raised:

⁶ See section 2.1.

- (1) First, it is a fully egalitarian assumption, which may, according to some authors – including liberal ones –, raise some difficulties in terms of incentives and, basically, is unequal.
- (2) Then, a policy which defends equality of well-being opposes other values that may be as much respectable, including the maintenance of familial values, and this policy may be expensive in terms of resources, in the sense that full equality requires a state supervision which degree could rapidly become intolerable.
- (3) Finally, another objection may be that equality of well-being should be rejected because it encourages peoples who provide less effort. It might be the case that the transformation of resources in well-being is not efficient, and the reasons for such efficiency may be found both in individual responsibility and in non chosen circumstances.

Amartya Sen also rejects objective conceptions of well-being, whether it is utilitarianism, which does not consider psychology and does not care much with personal condition of the individuals, or Rawls's conception in terms of primary goods: "*judging advantage in terms of primary goods leads to a partially blind morality*" (Sen 1980, p. 216). For Sen, the problem is that Rawls's theory, with the standard of primary goods, does not take into account what the goods are doing for the persons, what the income allows someone to achieve, the fact that the social basis for self-respect allows a person to respect him/herself. What we need to know is not what a good life is but what the essential needs for human beings are. In that sense, Rawlsian primary goods do not solve the problem of utility as an imperfect measure of well-being to utility and they neglect the capabilities⁷.

It might be the case that two persons with the same amount of primary goods will have significantly different well-beings if one of the persons cannot use properly the primary goods, because he/she is less talented, has a handicap⁸... It means that primary goods are not consistent for dealing with handicap or with diversity (in terms of health, of working conditions, of personality...). Sen accuses Rawls of fetishism of primary goods, in that he does not consider the relations between the goods and the persons⁹. This amounts to the claim that Rawls has basically no theory of well-being and that his theory of justice does not defend real liberty, so that the first principle is violated by the standard of primary goods.

2. Alternatives candidates for equality

Several debates developed on the nature of what to be equalized¹⁰, and it appeared that John Rawls's standard (primary goods as well-being) is not considered as the best suited for answering the question raised by the theory. Alternatives to well-being and primary goods have been proposed, two of the most prominent candidates being resources and opportunities (Dworkin), which importance relies on the fact that they integrate individual responsibility (2.1) and capabilities (Sen), which focus on the effects of the goods on the persons (2.2).

⁷ See section 2.2.

⁸ Of course, it is necessary here to specify what is a handicap; without a clear definition, any individual will be entitled to claim that he/she is handicapped.

⁹ This is not a problem for utilitarianism, because utility is precisely a relation between goods and persons, but we already saw that utility is not consistent for treating handicap and diversity.

¹⁰ Starting with Sen 1980, Dworkin 1981.

2.1. Resources: the preservation of individual responsibility (Dworkin)

In front of the serious problems posed by the standard of equality of well-being in terms of primary goods, Ronald Dworkin proposes the standard of resources and opportunity for well-being, which allows both the inclusion of individual responsibility (2.1.1) and avoids brute luck, which is a central tenet of egalitarian political philosophy (2.1.2).

2.1.1. Resources and individual responsibility

Richard Arneson also proposes to replace the principle of equality of well-being, since such a standard could correspond to choices without taking into account the lack of opportunity, with a principle of equal opportunity for welfare and, “*for equal opportunity for welfare to obtain among a number of persons, each must face an array of options that is equivalent to every other person's in terms of the prospects for preference satisfaction it offers*” (Arneson 1989: 85). He proposes that such an approach is better appropriated than equality of welfare, since the latter does not eliminate involuntary disadvantage, a trouble that, by definition, the victim cannot be taken as responsible. It amounts to equalize the access to the advantage, since the notion of advantage is larger and more flexible than well-being, and the notion of disadvantage is larger than the lack of well-being.

For Dworkin a distribution is just and equal as long as it is ambition-sensitive (rewards are based on efforts and on objectives) and endowment-insensitive (natural skills and unchosen or uncontrolled social position should be compensated.) He proposes a distinction between well-being and resource, and he claims that equality in the access to advantage corresponds to equality in terms of resources¹¹. As a standard for distribution, Dworkin proposes the equality of resources: everybody wants resources to reach the objective he/she values. This amounts to a starting gate theory of justice, with a system of auctions.

It is a fictitious situation and works as follows:

- All have the same natural skills
- Everyone has the same amount of money
- All resources are provided for all in an auction sale,
- The distribution is just if at the end of the auction everyone prefers his own resources endowment to other individuals’.

Dworkin’s example shows that a situation is just in which on the one hand a person decides to use his endowment for learning surf and living close to nice beaches, and on the other hand another person decides to use his endowment in having a Master and becoming an investment banker, even if it seems reasonable to claim that the activity as a surfer is useless and the activity as an investment banker may have negative effects. But nobody is disadvantaged.

Handicaps¹² may be solved in two ways:

- (i) Some amount of money could be taken from the total endowment and it would be redistributed to those who suffer from a handicap(s).

¹¹ Dworkin refers to all resources, including private resources.

¹² Dworkin displays three kinds of handicaps: physical handicaps, mental handicaps, skill handicaps (they concern people who have skills that are not marketable).

- (ii) An insurance market may authorize a person (under a veil of ignorance) to buy an insurance against different kinds of disadvantages, including handicaps.

Dworkin aims to achieve the three objectives of Rawls's theory on equality of resources, on compensation and on responsibility.

For instance, the compensation of natural disabilities rests on an insurance-related device; for Dworkin, such additional costs should be funded by a special fund dedicated to social resources. Since it is not possible, due to circumstances, to compensate all natural handicaps, it appears that full equality is impossible. It appears that Dworkin's approach is similar to the original position with a veil of ignorance: it is a hypothetical insurance-related market against handicap. At that stage, Dworkin seems to pretend that natural handicaps are the only source of illegitimate inequality. He neglects many issues, including the imperfection of information, the unpredictable and uncertain character of the circumstances. About the insufficiency of material resources, he states a distinction whether it is based on physical (or mental) deficiency or if it is based on the preferences of the individuals. He admits that a compensation for deficiency is legitimate, but he claims that a lack of responsibility is not a necessary condition for compensation. Therefore the protection against bad luck would be the object of an insurance which would make the difference between brute luck and option luck since, for example, delaying (or not) the purchase of an insurance can be seen as a calculated bet. Thomas Scanlon (1975) proposes a similar approach with a distinction between well-being and satisfaction of preferences, which amounts to a distinction between equality of access to advantage and equal opportunity of well-being. This means that every insufficiency of well-being would possibly allow some compensation, but only facts on individual preferences would determine if there is actually such a deficiency.

Responsibility is understood here as choice. Dworkin's theory allows to distinguish which advantages and disadvantages can be imputed to nature (brute luck) or to choice, so that a just distribution can be determined in compensating only disadvantages related to brute luck.

2.1.2. Resource and brute luck

It appears that Dworkin's distinction between preferences and resources is not fully satisfactory in the sense that it does not express correctly the denial of brute luck. Dworkin admits that the resources owned by each individual are explained by past choices and, therefore, the distribution pattern stemming from the market should be corrected in order to eliminate the difference in resource which can be attributed to luck, to an initial advantage, or to a specific individual capacity, so that only the differential endowments that are based on individual choices should be accepted. It means then that Dworkin justifies some compensation for reasons that are related to (brute) luck, but it does not justify it because of a difference in utility function. However, we can perfectly state that the bad luck suffered by some persons relies not only on their endowment in terms of resources, but also on their capacities to suffer and on the cost of their preferences.

We can display here two practical propositions, which are endowment-insensitive and ambition-sensitive¹³:

- Bruce Ackerman's stakeholder society

¹³ See Ackermann, Alstott, Van Parijs 2005.

After high school, everyone a given some amount that he can use as he wishes, so that all have the same opportunity to follow his/her ambition

- Philip Van Parijs's basic income

Everyone, whatever his/her occupation is, should unconditionally receive a certain amount every year, so that everyone is allowed to survive and is responsible for the increase of this amount.

It appears finally that, after Rawls integrated morality within political philosophy, Dworkin integrated the notions of choice and of responsibility within egalitarian political philosophy, notions that are traditionally associated with anti-egalitarian authors. Then the Dworkinian cut between preferences and resource is antagonistic with the previously defended cut between choice and chance, that is between personal identity and circumstances, the choice himself being submitted to some restriction due to circumstances like information asymmetries. We can just note here that for G.A. Cohen (1990), any disadvantage out of control should be compensated. He does not draw the distinction between preference and resource, responsibility and chance, or between resources and well-being, but rather between responsibility and chance. We even can pretend that the distinction **between** persons and circumstances is a technical one, in the sense that people do form their preferences, but not their powers. Besides, it is absolutely not clear whether how tastes should be situated within that opposition between choice and chance. For Rawls individuals are responsible of the cost of their tastes, and for that reason he chose the primary goods as a standard rather well-being in itself, because of its subjective character.

Almost ten years after the publication of *A Theory of Justice*, Rawls (1980) proposes a critique of well-being as the item to be equalized, on many points that are related to the issue of preferences:

- On the one hand, he does not agree with the objective – considered as a mistake – of equalizing the preferences that have different moral characters. Therefore, in criticizing utilitarianism, Rawls also criticizes *welfarism*, which he blames for being characteristic of any theory that claims that the just (or unjust) character of a distribution depends on the well-being of individuals. For example, a situation such that individuals maximize their well-being in discriminating other individuals should be condemned and is not consistent with the standard of equality of well-being.

- On the other hand, the differential in the cost of the tastes between various individuals amounts that the individuals with more expensive tastes should have a higher compensation than the individuals with cheaper taste. Dworkin himself considers that expensive tastes amount to a lack of resources, that is some kind of handicap, and therefore they require some compensation. He considers that tastes are imputable to the circumstances related to environment, and he wonders why it should be more costly to have an eccentric and then expensive taste, than a popular and then cheap taste, but he admits that it is counter-intuitive that a theory of justice compensates more a person who likes Champagne than a person who likes beer (1981b).

For Rawls, an elementary postulate is that people are responsible for their tastes. Yet it is perfectly possible to distinguish among states those for which the individual can be taken for responsible and those for which the individual cannot. On the contrary, Cohen proposes to implement a compensation that allows the preservation of both equality of resources and equality of welfare. Actually the problem is that the capacities of each individual are not distributed on an egalitarian basis.

2.2. Capabilities: between wealth and capacity, beyond Rawls (Sen)

Against utilitarianism, against welfarism and against Rawls's theory, Amartya Sen proposes a standard of capability, with the objective of overcoming the opposition between utility and primary goods, in answering their respective limits. Such a concept of capability represents an innovation, and not a combination of former theories. It is based on the notion of functionings (2.2.1). The possibility of associating capability and liberty is discussed here, within the debate on the relation between the notions of equality and liberty (2.2.2).

2.2.1. Beyond utility and primary goods, the achievement of functionings

With a view to reconstructing welfare economics, Sen is looking for new instruments for measuring the collective well-being. As a matter of fact, Sen is more preoccupied with poverty than with inequalities, and for that reason he selects the notion of capability, which is supposed, to measure the privation imposed by poverty. He rejects the assessment in terms of primary goods, since the point is not anymore to evaluate the means that a person has for reaching his/her goal, but the liberty of an individual to choose between various modes of life¹⁴. He defines elementary capabilities as the ability for an individual to “*do certain basic things*” (1980: 218). For Sen, capabilities are the best way to render the diversity of people: different persons who are situated in different circumstances – in physical, intellectual or social terms – need different quantities of primary goods to satisfy the same needs and “*judging advantage purely in terms of primary goods leads to a partially blind morality*” (*Idem*: 216). Against primary goods, Sen proposes the capabilities, since they do not refer to the goods but to the effects of the goods on the persons. “*The conversion of goods to capabilities varies from person to person substantially, and the equality of the former may still be far from the equality of the latter*” (*Ibid.*, p. 211).

It would be a mistake to concentrate on goods without wondering about the effects of goods on persons. For instance, anything else being equal, the amount of resources which are necessary for a disabled person is higher than the amount necessary for a non-disabled person, in the sense that the former cannot achieve some functions like moving properly and, for that reason, the society – through the tax-payers for instance – will have to compensate him/her. This seems to correspond to some intuition, but it appears that utilitarianism will give less to a disabled person than to a non-disabled, since an additional income will not allow a disabled person to improve his/her utility in the same proportion as a non-disabled person. As for Rawls, the difference principle does not wonder if the disabled can act or not, so that this does not change the distribution.

Measuring the well-being in terms of utility is condemned, in the sense that people can easily modify their preferences according to their conditions. Therefore, Sen sees capability as a way to overcome the opposition between utility and primary goods. Neither utility nor primary goods are able to give information on exploitation or on discrimination. Capability refers to what people can get from goods, which does not appear in a reasoning in terms of primary goods, of well-being, and *a fortiori* of utility. Within the egalitarian political philosophy, that is the political philosophy which, from Rawls, condemns brute luck, and beyond the

¹⁴ See 1.2.2..

distinction between choice and circumstances, Amartya Sen proposes the concept of capability, which is such that the lack of it impedes the needs to be satisfied. It includes a number of items, from the most basic one (food, health care...) to the most complex one (self-respect, collective involvement...). Sen accuses primary goods to be fetishistic on their concentration on goods, and he accuses utility to concentrate the persons' mental reactions instead of their capabilities, which are supposed to be much more essential for living a life.

For Sen, what is to be equalized is the set of "*basic capabilities [as] a morally relevant dimension taking us beyond utility and primary goods*" (*Ibid.*, p. 213), since more complex capabilities are not consistent for assessing justice issues. He rejects the claim that the condition of a person can be measured exclusively in terms of the amount of goods that she/he owns or in terms of well-being, but he sees his theory as a natural extension of Rawls's interest in primary goods. This is why he does not propose to evaluate the real state of a person, but the opportunities that are offered to him/her and, instead of measuring them in terms of amount of goods or in terms of well-being, he propose the functionings. For Sen, having a capability is nothing else than being able to achieve functionings. They are personal features; they inform us on what a person is doing. In other words, the functionings are what a person can achieve with the goods he owns and the features he has. The capabilities, which are generated by the consumption of a good, result from a functioning.

Some difficulties may appear appear later. Sen points two of them:

- Measuring the bundles of capabilities is the same problem as measuring bundles of primary goods: conventions will be necessary.
- Any implementation if the equality of basic capabilities will depend on the culture, but at least it is not fetishistic on goods, because it refers to what goods are doing to persons, which can integrate cultural features.

2.2.2. *Capability and liberty*

On the one hand, Sen presents his approach as an attempt to go beyond two oppositions: the opposition between Rawls's approach, utilitarianism and welfarism, and the opposition between the compensation of preferences (Dworkin) and their lack of compensation (Rawls). Equalizing capabilities amounts to equalize the objectives that can be possibly reached, which actually is rather a landmark than a concrete objective. For Sen the capability as an operative category is what comes the closest to positive liberty. Here the central issue is the real freedom¹⁵ of the individual, that is what he/she can really achieve, and it is another reason why he gives up the primary goods as a standard for evaluation, since the objective is no more the maximization of the means that the person has for reaching his/her goals, but the maximization of the liberty of choosing among various modes of existence. Such an approach is close to an interpretation in terms of real freedom, such the one defended by Philippe Van Parijs (1991, 1995), who states that the maximization of real freedom for all corresponds to those of the least advantaged individuals, in the same logic as the difference principle.

Exercising the capability for an individual corresponds to his/her self-achievement through his/her activity. The agenda would then be to replace the rule of circumstances and luck on

¹⁵ As opposed to formal freedom, in sense that Marx was claiming that real freedom ends where and when necessity begins.

individuals by the rule of individuals on luck and on circumstances¹⁶. Therefore both the liberal catchword “to each according to his/her ability” and the Marxian one “to each according to his/her needs” (see Marx, Engels 1875) can be reconciled. Capabilities are then members of the sub-set of a larger entity that Sen calls *midfare*, as a state in the midway between resources and well-being. It corresponds to the conditions of the persons that are produced by the goods, and they are such that the various levels of utility get some value. It comes after the possession of the goods and before the production of utility¹⁷.

Midfare is different from capability; a *midfare* is not necessarily a capability: for instance a baby does not achieve a capability, since he/she is not able to feed himself/herself, but he/she acquires *midfare*, as a result of the food he/she eats. It is an effect of the goods on the persons, which is different from utility, since it can lead persons to states in which they want to be, without necessarily that the individuals who enjoy it realize a capability. It is part of the effects of the goods on the persons, but it does not necessarily correspond to these goods. For instance, food gives someone the capability to get fed, but nothing ensures that the person achieves this capability. Being fed is different from feeding oneself, and the value of the primary goods corresponds to what the persons can do with them.

We then have a sequence goods-*midfare*-well-being. This approach is in an intermediary position, which presents itself as an overtaking, between liberal egalitarianism on the one hand, for which well-being is too subjective (Rawls), depends of the identification of people (Dworkin) or is too specific (Scanlon), and utilitarianism on the other hand, for which a Rawlsian-type measure is far too objective. They are not interested in the goods themselves but in the utility offered by the goods, in terms of emotional reaction rather than in terms of the effects in the real life. As we previously discussed, leading an egalitarian policy does not amount to point out utility or primary goods as standard to be equalized, since the state of a person is not reducible to the amount of goods he/she owns, or to the utility he/she enjoys. Then Sen modifies the modalities for the equality of well-being, and he turns from a concrete well-being to a capability, and from the well-being in itself to the well-being as a desirable state for the persons.

Capability is supposed to amount to the self-realization of an individual through his activity, which amounts to the control of one’ life, and it seems to us that the equalization of capabilities is what comes the closest to real freedom.

Dworkin and Sen discussed the nature on what to be equalized, but they do not pretend to discuss how to implement equality, that is on what to apply such principles (the basic structure) and the nature itself of the principles of equity (basically the difference principle). This is what Jerry Cohen does.

3. On the implementation of equality (Cohen)

Cohen’s critique appeared relatively late (1999, 2008), after he laboured very cautiously Marx’s theory of history and self-ownership¹⁸, but his contribution is central. He posits himself as an internal critique of Rawls’s philosophy, his discussion is not based on the nature of what to be equalized – namely the primary goods – but on the way things should be done, that is on the nature of the object on which equality has to be applied (the basic structure) and

¹⁶ This approach recalls the Marxian debate on the man’s rule on nature (see Engels 1878).

¹⁷ For a discussion see Cohen 1990.

¹⁸ See Tarrit 2013.

on the mechanics with which equity is reached (the difference principle). First, it seems that, on the basic structure, his approach applies the Kantian imperatives more systematically than Rawls does (3.1). Then, his critique to Rawls is more specifically based on the difference principle and on its counterpart on the incentives justification (3.2). His critique then unexpectedly moved from a post-Rawlsian interpretation to a Christian one (3.3).

3.1. On the basic structure: institutions and personal choice

Apart from its Marxist foundation, Cohen's philosophy got directed to Kant's, besides Rawls's. The Rawlsian approach is based on a Kantian philosophy¹⁹, in particular in resorting to categorical imperatives. The difference between the two turns on the basic structure; Cohen thinks Rawls is not Kantian enough and he attempts to "rekantianize" Rawls's theory in redefining it and in stressing the need for an egalitarian individual philosophy. However, it is only Kantian in a general and arbitrary meaning, and Cohen proposes an interpretation, which he takes as closer to Kant in detail. He claims that the difference principle must apply not only to rights but also to virtue (3.1.1), which leads him to a critique of Rawls for being conservative (3.1.2).

3.1.1. Coercive structure, informal structure and action: Cohen's contribution on virtue

A central point in the critique of Rawls by Cohen is based on the object to which the principles of justice must apply, namely the basic structure. Cohen notes that Rawls does not integrate the distinction between right and virtue as it appears in Kant's. On that issue we will display two central features in his critique. On the one hand, Cohen claims that the basic structure should not be restricted to the coercive structure (3.1.1.1). On the other hand, against Rawls's holism, Cohen gives a central role to the individual behaviours, even if he does not advocate methodological individualism (3.1.1.2).

3.1.1.1. Against the basic structure restriction

Cohen displays some ambiguities on what are the elements, which make up the basic structure. For Rawls, it consists of a set of institutions to which the principles of justice are supposed to apply. Cohen criticizes such a specification of the basic structure as inadequate, and he claims that a theory of justice does not fit if it restricts it to the legislative structure in which people act, without taking their actions into account. For Rawls (1971), the aim on any social system is to achieve a just distribution, whatever the circumstances are. Cohen's objection of is that he founds the basic structure on a purely coercive specification, which is, for that reason an arbitrary specification. Cohen breaks down the social structure in a coercive structure and a non-coercive structure, and more precisely he attributes four sets of elements to the basic structure (Cohen 1997: 26):

- The legal coercive structure
- The informal structure

¹⁹ See Rawls 1975, 1980.

- The social ethos: *“the set of sentiments and attitudes in virtue of which its normal practices, and informal pressures, are what they are”* (Cohen 1999: 145).
- The choice of individuals

On the one hand, a coercive structure displays the limits beyond which the persons cannot act unless being legally sanctioned, and it lets people informed on the effects of what they do. On the other hand, a non-coercive structure does not lead to any formal and legal ban, but it displays some informal things that correspond to a ban (critiques, disapprovals, lack of cooperation, violence...). The informal structure corresponds to the way the social relations are organized in terms on non-legal interactions. It includes distinctions between social categories, sex, ethnic categorizations, differences in terms of status, and it determines specific patterns of social behaviour. It results from recurrent behaviours that are based on informal norms, rules and conventions, which are not implemented by State institutions, and it allows a distinction between accepted behaviours and deviant behaviours. It is an independent factor in the distribution of social costs and benefits.

3.1.1.2. Cohen beyond the structure

Cohen stresses not only the coercive structure – both legal and informal – but also the individual behaviours and the personal choices within this structure. Therefore, the level of justice in a society is not only a function of standards of distribution related to its coercive structure, but also of personal choice of individuals within such rules, and a just society, in the sense of the difference principle, requires not only coercive rules, but also a personal ethos, that is a conception of justice, for individual choices²⁰. In the absence of such choices, that are supposedly based on the advocacy of a fairer distribution, inequalities that are unnecessary for improving the situation of the disadvantaged will persist, which contradicts the difference principle. Therefore justice requires an individual ethos beyond the obedience to rules and to norms, to coercive and informal structures, even if they are just: *“An ethos which informs choices within just rules is necessary in a society committed to the difference principle”* (Cohen 1999: 132). On that issue, in separating the personal choices and the legal structure²¹, Cohen is more Kantian than Rawls, since Kant (1996) traces a distinction between law and morality.

On the one hand, Rawls resorts to Kantian-type categorical imperative, but it is only an imperative in legal terms. On the other hand, it must also be, for Cohen, an imperative in terms of virtue, insofar as individual actions, together with the informal structure of society and the social ethos, have, as they are defined, no legal framework. Including such behaviours within the basic structure corresponds to the claim that all individual behaviours can be submitted to judgments in terms of justice.

Consider the following alternative: either Rawls restricts justice to the coercive legal order, or he admits that the principles of justice shall be applied to all social behaviours and to personal choices that are not determined by the law.

²⁰ A society, which is founded exclusively on the coercive structure, in which the choice of individuals has no effect, is totalitarian.

²¹ “According to Kant, the same moral principles fit to both essential areas of human practice, virtue and law, but are differently applied” (Höffe 1988, 65, personal translation).

In the first case, Rawls arbitrarily restricts its object study; in the second case, he fails in his attempt to restrict the justice to the legal structure. He judges the structure and not the actions. In any case, his interpretation equates the basic structure and the coercive legal structure. Yet Cohen charges Rawls for not being sufficiently precise on that point, in the sense that a narrow elaboration such presented previously is considered as an arbitrary one, since effects on the individuals are not only exerted by the coercive legal structure. Then the principles should apply both to coercive – both formal and informal – structures, to non-coercive orders, and to the individual choices and behaviours.

3.1.2. The basic structure objection: Rawls's conservatism

The Rawlsian difference principle lays open a potential contradiction between the achievement of this principle and the behaviour of utility maximizing by rational individuals, since it might be the case that such maximizing individuals do not agree with the difference principle. Therefore this principle may not be strictly applicable to the basic structure of a society, institutionally speaking. Cohen's analysis gives to the individual a major role, even if it cannot be presented as methodological individualist (3.1.2.1). He inserts individuals in a larger issue around the culture of justice (3.1.2.2).

3.1.2.1. Cohen: the individual without methodological individualism

What is personal is political: for Cohen, the personal choices for which law gives no information are crucial for social justice. In a just coercive structure, it might be the case that an injustice in distribution corresponds to personal choices, and it raises the issue of individual responsibility. As a result, Cohen proposes the assumption that the principles of justice must apply not only to coercive rules, but also to the individual choices that are not under legal constraint. Moreover, only choices that are voiced by people, whether they are individual or collective, may allow an evolution in the coercive legal structure. "*The view that [he] oppose[s] is the Rawlsian one that principles of justice apply only to what Rawls calls the 'basic structure' of society*" (Cohen 1997: 4). Thus he charges Rawls both for:

- radical holism because he "*retreats to coercive structure*" (1997, 21),
- conservatism because in Rawls's individuals have no chance to change the basic structure.

Then the choices of the persons become a consistent standard for judging if a society is just or not, and it is necessary to analyse which standards of judgment may be given to the individuals. On the one hand, it is not possible to generalise one's own philosophical posture; on the other hand, the possibility of passing judgments on individual actions is not straightforwardly a philosophical issue. However, stressing the responsibility of individuals does not necessarily correspond to the approval of an argument in terms of methodological individualism. It also may correspond to overtake the opposition between holism and individualism. Individual choices are inserted within a set of social practices and they can be judged as such; they are socially conditioned, so that it can be costly for an individual to deviate from the social norms. Thus, it does not make sense to analyse an individual behaviour or a social structure on an independent basis, and neither methodological individualism nor methodological holism are consistent as such. Individuals act according to

what they judge to be their interest, under – legal and informal – constraints that are determined by a given social structure.

Now, it is noteworthy to keep in mind that Cohen proposes two meanings for the term “Analytical” in “Analytical Marxism”²²: a broad meaning, as opposed to “dialectical”, and a narrow sense, as opposed to “holist” (2000, xxii-xxiii). In his debate with Elster in the early eighties²³, Cohen charged the latter for stressing too much that narrow analytical aspect. Two decades later, he had come closer with Elster, since he judges that “a micro-analysis is always desirable and always in principle possible” (2000, xxiii, emphasis in the original). Yet, he does not straightforwardly advocate a methodological individualist approach. He is neither only concerned with the structure in which the choices are specified, whether it is coercive or informal, nor with a set of individual choices, but with the pattern of interactions between structure and choice, what he refers to as “distributive justice” (1997, p. 3). His conclusion is that if they are analysed independently from each other, structure and choice wear a secondary importance in the determination of distributive justice, if the circumstances, which make the pattern divert through chance, are not taken into account. Now the point is to restore the alternative between choice and chance.

3.1.2.2. Basic structure and culture of justice

Cohen admits that his mainstream Marxist background led him, when he was younger, to despise any kind of advocacy or justification of the inequalities. Now he thinks that they should be discussed, and he displays two kinds of defence of the inequalities:

- (i) a normative defence which approves inequalities and considers them as just,
- (ii) a factual defence which does not deny that inequalities are unjust but which claims that it is too costly to delete them.

Now, entering a Rawlsian-kind structure, he claims that the principles of distributive justice must also apply to choices that are not under legal obligation. Then distributive justice is not only concerned with social rules – whether they are legal or not –, but it is also a question of attitude and of personal choice, and the justice of a society would not only depend on the coercive structure, but also on the individual choices that are made within that structure. The latter would then be led by a culture of justice that each individual would be endowed with, and without which inequalities that are harmful to the improvement of the disadvantaged would persist.

He claims that such a culture is necessary for two reasons that are related:

- (i) the impossibility to implement egalitarian rules that can be confirmed
- (ii) the problems that would be raised if those rules should be followed at any price.

It would be unpalatable to limit the basic structure and the application of the principles of justice to the legal coercive structure; they also should apply, through an egalitarian ethos, to the choices and behaviours of individuals in that basic structure. The principles of justice should then correspond to the individuals’ behaviours that are not legally constrained. Since it is not possible to apply the difference principle on an individual basis, they should be inspired

²² It shall be reminded here that Cohen was an initiator of Analytical Marxism (see Tarrit 2006).

²³ See Cohen 1982, Elster 1982.

by an egalitarian philosophy, for instance by the principle of difference, which corresponds to a generous behaviour from the richest to the poorest.

For Cohen any society should be endowed with a culture of justice in order to implement the difference principle, so that the most talented persons would not demand high wages. Then there must be a correspondence between personal ethos and informal structure. It is the reason why Cohen proposes a social ethos rather than an egalitarian one. However he assumes an explanatory primacy to the individual choices, in the sense that *“people do have choices: it is, indeed, only their choices that reproduce social practices”* (1999, 143, emphasis in the original), and that only individual choices may modify the informal social structure, which is considered as given beforehand.

This is the sense in which Cohen moves the political theory from an institutional approach based on the legal structure to an interactional approach based on behaviours, actions and interactions of individuals and groups of individuals. With such an interpretation, it cannot be the case that Rawls is more conservative than Cohen. In including virtue to the basic structure, Cohen broadens the Rawlsian problematic to the individual, without defending a methodological individualist approach.

3.2. A critique of the difference principle and of the incentives justification

Another critique of Rawls's theory by Cohen is not related to the basic structure, but to the difference principle, namely a general principle of justice, which is supposed to apply to the basic structure. The difference principle is based on an approval of the inequalities if they benefit the disadvantaged. Therefore, even if the egalitarian authors allow very few credit to the assumption that the inequalities can benefit the disadvantaged, they do not deny that they would accept them if it was the case, and Cohen *“ha[s] no quarrel with the principle itself but... in [his] view, there is hardly any serious inequality that satisfies the requirement set by the difference principle”* (1999, 124). He elaborates a critique on the issue of the incentives that, for Rawls, justify some degree of inequality. Then the difference principle, together with the assumption of an incentive principle, factually advocates inequalities, and for that reason it wears contradictions (3.2.1). Some ambiguities appear between the difference principle and the notion of solidarity, which is supposed to be included within that principle (3.2.2).

3.2.1. An advocacy of inequalities on the name of incentives

On the one hand, the egalitarians that we may call socialists wonder about equality in absolute terms, but not in relative terms. They are concerned with unnecessary misery, and equality would be desirable in the sense that it would improve the condition of the disadvantaged, and they have no consideration for the deterioration of the condition of the richest. On the other hand, the difference principle favours inequality insofar as it allows an improvement in the condition of the disadvantaged. He opposes then to a straightforward equality. Under circumstances where there are disadvantaged persons, an egalitarian could advocate the difference principle, since it could clear the social inequalities. Therefore, the notion of equality moved from a premise to a result. The difference principle raises various contradictions on that issue. Such an advocacy of inequalities is rather factual than normative (3.2.1.1) and Cohen judges that the principle has no substantial content that can have a concrete implementation (3.2.1.2).

3.2.1.1. A factual defence of inequalities

For Rawls, an inequality is justified when it improves the conditions of the disadvantaged. A widespread interpretation of that claim proposes that material incentives, when associated with an economic inequality, have a positive impact on the motivation for production. This argument can be seen as a possible interpretation of the difference principle, and it can be used for advocating a fall in the taxation of the richest. The argument goes as follows:

- The *major normative premise* claims that economic inequalities are justified when they benefit the disadvantaged.
- The *major factual premise* claims that when the taxation level is low, then the richest – who are considered, by definition, as the richest – are more productive.
- The *conclusion* claims that a greater amount of wealth would be available for the redistribution, and opportunities for employment would appear to the poorest.

Incentives that allow inequalities would then be justified because they improve the situation of the poorest. Therefore, a public policy, which aims to improve the condition of the disadvantaged, should make the taxation on the richest fall, since the situation is more favourable to the poorest than in a more equal society. A policy like the ones, which were implemented by the British and the American governments in the early eighties, could then be based on the difference principle²⁴. However, this argument rests on the assumptions that the preferences are selfish and that the richest have a strategic behaviour. Inequalities are then necessary only if those persons decide to produce less in case of a fall in the inequalities. Yet, what seems to be a normative defence of the inequalities is indeed a factual defence. Rawls does not prove that an inequality is just if it leads to incentives, he only claims that it cannot be avoided.

Another element in the critique is a question of definition: Rawls claims that the richest are the most talented, but being more talented is not equivalent of being able to earn a higher income. The only valuable claim is that those people are in such a condition that they can demand a higher wage, and that they can modulate their productivity around such an income. Yet, it can be allowed that their position results from random circumstances, that is from brute luck, which contradicts the Rawlsian assumption that all have the same opportunities. “*The incentives argument for inequality represents a distorted application of the difference principle*” (Cohen 1999, p. 126).

3.2.1.2. A useless principle

One of Cohen’s critiques to Rawls rests upon the assumption that in a society, which is entirely²⁵ based on the difference principle, and then characterized by fraternity and dignity, the most talented will not need the incentives, and the expected outcome will not occur. The incentives argument is not necessary for the difference principle if the persons accept that principle and then incentives that aim to justify it must be based out of the community. The

²⁴ It is noteworthy that libertarians like Nozick also encourage such policies.

²⁵ This corresponds to the four elements in the basic structure that were previously discussed

difference principle amounts to the claim that an inequality is justified if it benefits the disadvantaged. Yet it is barely possible to demonstrate that clearing an inequality does not benefit the disadvantaged, this is why it is difficult to justify an inequality in the name of that principle. Then, whether an inequality can benefit the disadvantaged depends on the constraints that are related to the incumbent unequal structures. Therefore, inequalities can be seen as attractive for the disadvantaged only if the incumbent structures are unequal. The difference principle is based on an implicit solidarity between the various categories of the population, and its implementation requires some degree of homogeneity and of social cohesion. In order to preserve justice, Rawls advocates “*an institutional division of labour*” (2001, 54) between individuals and associations, within which everyone is free to act as he wishes. Besides, it is assumed that the persons will not have more advantages except if it benefits to the worst off. Yet it is not compatible with Rawls’s assumption that individuals are maximizers. For Cohen (1995, 179), the demand for having no more advantages unless if the disadvantaged benefit from them is at least ambiguous.

3.2.2. *Difference principle and individual behaviour*

The fact that the individual is absent in the Rawlsian basic structure does not mean that it is absent in the whole model. Under Cohen’s interpretation, it might be possible to establish connections between a defence of the difference principle and the integration of the individuals in the analysis. Notwithstanding what is implicit in the analysis, solidarity is not assumed by the difference principle (3.2.2.1), and the interpretation of this principle is based on the place given to the individuals; for Cohen, it requires a culture of justice (3.2.2.2).

3.2.2.1. The lack of a connexion between the difference principle and solidarity

Contrary to what it seems to be implicitly assumed, the difference principle is not necessarily consistent with solidarity. A critique is here directed on the factual premise of the argument, which leads to the conclusion that the richest would be more productive if they pay less tax. Such a claim has no justification, and it is necessary to prove the conditions why the richest, even under the assumption that they are the most talented²⁶, would be more productive if they pay less tax. What the persons do depends on the reasons why they are doing it. They improve either their capacity to work, or their willing to work. Under the first assumption, this means that the richest must have a higher consumption in order to be more productive, which is not likely. Actually what is modified is their cost-benefit alternative. Under the second assumption, a lowering of the taxation for the richest would lead to lessen their reluctance to work. Yet, individual well-being is not only a material issue, and it is not the only thing which is rational to be interested in. Thus, if a monetary inequality disappears, it could be the case that individuals tend to replace it with another inequality. There can be a whole set of non-monetary motivations, like status inequalities (Roemer 1982). However, the incentives argument, even if it might be presented as a cooperative behaviour for the richest, is firstly the proof of a lack of solidarity towards the fellow members of a community, and this leads to deny the brotherhood assumption, which is presented by Rawls. If the members of a society accept the difference principle, no incentive would be necessary.

²⁶ It is highly unlikely that the richest and the most talented are the same groups of persons but we do need to go further to that issue to claim the existence of inequalities.

3.2.2.2. Difference principle and culture of justice

Rawls implies that, in a just society, people are endowed with a sense of justice, which amounts to the fact that they are free and equal. However, nothing guarantees a corresponding behaviour, since individuals are assumed to be only motivated by their own interest. Besides, beyond such a contradiction, such a sense of justice appears explicitly in Cohen's redefinition, whereas it is only implicit in Rawls. Rawls and Cohen both care about the existence of a culture of justice, even if they do not care on the same explanatory level and, as a result, they agree that the value that must be privileged in political philosophy is solidarity rather than equality.

According to the function, which is given to the individual, will, the difference principle may be allowed various interpretations. On the one hand, in a straightforward interpretation, which is Rawls's, inequalities are only necessary when they are independent from individual intentions. On the other hand, a broader interpretation, like Cohen's, includes the demands that are related to such behaviours. The claim that inequalities cannot improve the condition of the poorest unless we assume a maximizing behaviour from the richest stems from a broader interpretation of the difference principle. A straightforward interpretation rests upon the implicit assumption that the persons are attached to a conception of justice, which is based on the difference principle, since everyone accepts such principles of justice and knows that everyone else accepts them too (Rawls 1980: 521). Such a conception shall then have an influence on people's motivation. The mutual support between persons is then necessary for the difference principle.

For Cohen (1992: 314), "*justice is itself a compromise or balance between self-interest and the claims of equality*". This is how the difference principle requires a culture of justice, an ethos. Cohen "*believe[s] that a just society is normally impossible without one*" (1992, 315). The conjunction of the defence of individual interests with the currency of the social justice would then be fortuitous. An egalitarian ethos would lead to a situation in which the request for a conscious concern to the disadvantaged is useless, since that concern would be internalized. This allows removing the posture of mutual indifference as it is assumed in the original position:

- On the one hand, nobody knows which behaviour the individuals will choose within their interactions.
- On the other hand, that mutual indifference is not compatible with the brotherhood values that are advocated by Rawls.

Therefore, the broad interpretation presented by Cohen is more cautious than Rawls's, but it is not fundamentally based on social justice, and it requires just individual behaviours. Then, Rawls must give up either the incentives for the richest to exert their talent, or the brotherhood ideals. Cohen "*think[s] the ideals are worth keeping*" (1992: 322)²⁷.

²⁷ Their absence in the Rawlsian theoretical background leads Cohen to give it up for taking an individual interpretation rather than a social one, and he resorts then to religious texts.

CONCLUSION

In a context of utilitarian rule, John Rawls has been the first central author to offer a framework for initiating a debate on equality, with the primary good as the standard for a fair justice, as a representation of both the social well-being and a measure of the performance. Ronald Dworkin judged that the standard of primary goods does not give enough importance to the individual responsibility without giving up equality and then he proposed the standard of resources. Amartya Sen proposed a position that can be judged intermediary or transcendental, with the notion of capabilities, with which he attempted to approach real freedom, beyond utility and primary goods. Then, from Rawls to Sen, the debate on the nature of the object to equalize became more and more sophisticated, until capabilities, as a standard for integrating several dimensions of well-being, until self-fulfillment. This opened the way to the possibility of building theories of justice that go beyond the opposition between equality and liberty. Besides, methodological points have been discussed; the issues of the role of the individual behaviors and of the logical consistency of the theory – including the difference principle – were discussed to a great extent in Jerry Cohen's contributions, which interrogate the logical consistency of the theories of justice and propose a further clarification. We can conclude that even if very few authors agree with Rawls's theory, most of them defend the claim that Rawls's *A Theory of Justice* became a central reference in egalitarian political philosophy.

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