



Egalité et justice sociale : une approche philosophique.

Cyrielle Poiraud

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**Égalité et justice sociale.
Une approche philosophique**

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“L’Université de Strasbourg n’entend donner aucune approbation
ni improbation aux opinions émises dans les thèses : ces opinions doivent être considérées
comme propres à leurs auteurs.”

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General Introduction

This thesis comes within the scope of the literature of modern and contemporary social justice theories, while focusing on the question of equality and the way it became a fundamental concern for these theories. It suggests a conception of equality as the condition of possibility of justice, and thus of freedom, this one being assumed as the object of social justice, or more broadly of political thought since modernity. It also foresees the limits of such a conception, which has notably been addressed for its totalizing implications. Eventually, the main idea is to investigate the *tension* that seems to characterize social justice: justice cannot be reduced to equality although we assume it is one of its necessary conditions. The thesis thus defends the necessity of a dialectical method to consider distributive issues as related to their stake, real freedom. The different aspects and central concepts mentioned above, namely social justice, the question of equality, the one of freedom, and of modernity, constitute the object of this general introduction.

Social Justice

Social justice appears to be a more than old issue when considered as related to the issue of inequality. Since Ancient philosophy (for instance, Plato, 380 BC), the question of whether inequalities are acceptable and to what extent, has been asked, which led, in modern (notably through the social contract tradition, led by Rousseau, Locke and Hobbes) and contemporary times to wonder how to organize society so that these inequalities would be reduced, cancelled, or considered fair. John Roemer (1996) insists on the fact that “the theory of distributive justice—how a society or group should allocate its scarce resources or product among individuals with competing needs or claims—goes back to at least two millennia” (Roemer, 1996, p. 1), and one could add, in order to provide the conditions of a fair society. Regarding contemporary times, it appears that it is John Rawls who opened the path of a renewed way to think of distributive issues, with his *Theory of Justice* (1971). Indeed, it is often considered as the first formal theory of social justice that settled its stakes since the second part of the nineteenth century, so as Roemer pointed out: “there has been (...) a renaissance, since the publication of John Rawls’s magisterial *Theory of Justice* (1971), of philosophical interests in the question” (*ibid.*). Fleischacker (2004) also suggests this idea, while clarifying those stakes:

“The two questions that have most preoccupied political theorists working on distributive justice since Rawls are (1) what goods ought to be distributed, and (2) how much of these goods everyone ought to have. These questions are linked. It is fairly obvious that everyone ought to have an equal share of some goods (e.g., civil rights) and that it makes no sense to seek an equal distribution of some other goods (e.g., chocolate bars). Once the goods to be distributed are specified in a way, however—as units of utility, primary goods, and so on—there remains a question about whether the Difference Principle adequately captures the demands of distributive justice. Perhaps one ought to aim instead either for stricter equality or for some sort of “guaranteed minimum” of these goods, by which no one would fall below a certain level but the inequalities in society could range further than the Difference Principle would allow.” (Fleischacker, 2004, p. 117)

Rawls’ theory is thus understood as the starting point of contemporary theories and these ones appear to concentrate almost exclusively on the fair distributional scheme, in terms of *amount* of goods. We subscribe to this vision, as an explanatory one, but argue in the sense that it is not all. Indeed, some dimensions,

and notably the one of recognition seems absent from it; it is usually less explored and this thesis shall try to foresee how to integrate it to distributive concerns.

But let's first have a closer look at Rawls' conception, that expresses mainly in his principles of justice, formulated as follows:

“First: each person is to have an equal right to the most extensive scheme of basic liberties compatible with a similar scheme of liberties for others.

Second: social and economic inequalities are to be arranged so that they are both (a) reasonably expected to be to everyone's advantage, and (b) attached to positions and offices open to all” (Rawls, 1971 [1999], p. 53)¹.

So here is the outline of the two principles of justice that Rawls first formulated in his *Theory of Justice* in 1971. And while settling the contemporary bases for thinking distributive issues², he also already suggested the tension that is at the heart of justice. Indeed, his formulation combines a principle of equality (that applies to freedom) with a principle of “difference”: “we distinguish between the aspects of the social system that define and secure the *equal* basic liberties and the aspects that specify and establish social and economic *inequalities*” (*ibid.*, my emphasis). Here is expressed the essence of what is being problematic regarding social justice issues: how to guarantee people's freedom according to the rule of equal treatment—so involving some uniformity—that seems somehow necessary, without being in contradiction with the essence of modern liberty itself, that includes self and personal determination?

We assume that this tension is present throughout contemporary social justice theories whose examination reveals a strong commitment towards some norm of equality as Amartya Sen notably showed (1992, p. ix; 2009, p. 293). In Rawls', the principle of liberty, conditioned by equality, is absolutely prior: that is the “first

¹ Reformulated later in the book in the following way: “First principle: Each person is to have an equal right to the most extensive total system to equal basic liberties compatible with a similar system of liberty for all. Second principle: Social and economic inequalities are to be arranged so that they are both: (a) to the greatest benefit of the least advantaged, consistent with the just savings principle, and (b) attached to offices and positions open to all under conditions of fair equality of opportunity” (Rawls, 1971 [1999], p. 266).

² Indeed, many authors consider *A Theory of Justice* as establishing the foundations of contemporary distributive theories. For instance, Fleischacker (2004) has noted that “in the past thirty years, there has been an outpouring of writing on distributive justice, mostly responding in some way to Rawls.” (Fleischacker, 2004, p. 116)

priority rule”, “the priority of liberty” (Rawls, 1971 [1999], p. 266)³, which takes part of the formulation of the principles of justice themselves, so that the norm of equality is made essential too. Thus, there appears, not only in Rawls’, a sort of fundamental demand for some rule of equality in the framing of social justice principles. This issue of the norm of equality will properly be the object of the second chapter, of which we shall give a first overview later in the introduction. For now, we can indeed refer to the branch of egalitarian theories, or the more specific one of “luck egalitarianism” (after Anderson’s formulation (1999)), notably including Richard Arneson, Gerald. A. Cohen, Ronald Dworkin, Thomas Nagel, Eric Rakowski, John Roemer, or else Philippe Van Parijs. But thinkers who do not seem to rely on some principle of equality at the first stance are also concerned by this norm of equality, just as Sen (2009) explained that utilitarians and libertarians for instance do assume some form of equality as necessary, as they implicitly put at the heart of their theory claims of equality, in terms of equal treatment in the process of aggregation of individual utilities or of equal access to libertarian rights, respectively. They all wish equality “of something”.

General and Particular Equality

This idea of a *norm* of equality is precisely what this thesis aims at clarifying. Our reflexion indeed started with a distinction that Amartya Sen suggested in his 1980 article “Equality of What?”, and that, we argue, is central to provide a better understanding of the philosophical issues that may rise from normative and ethical discourses about the rules of distribution. This distinction is the one that separates the two fundamental questions “Equality of what?” and “Why equality?”. The thesis settles that the former refers to a *particular* dimension of equality (related to the notion of space, focal variable, or else *equalisandum*—that is the specific content one theory attributes to equality and that must be equalized in order to provide a fair state of things), and that the later refers to what I call the *general* dimension of

³ “The principles of justice are to be ranked in lexical order and therefore the basic liberties can be restricted only for the sake of liberty. There are two cases: (a) a less extensive liberty must strengthen the total system of liberties shared by all; (b) a less than equal liberty must be acceptable to those with the lesser liberty” (Rawls, 1971 [1999], p. 266).

equality (related to the abstract idea of equality in itself, that is the norm that surrounds contemporary social justice theories as we will see). Since Sen's 1980 seminal paper, the concern of social justice theories is essentially to provide an answer to the question "Equality of what?", and thus they focus almost exclusively on the conception of equality as a particular determined space. Now, this thesis defends the idea that the general, even formal, dimension of equality, that involves interest for normative concepts such as recognition or impartiality, is as much important, although it is often set aside by most economists. It is in that sense that a philosophical approach turns out to be necessary: equality, as related to the fundamental demand for impartiality regarding matters of justice, but also to a modern conception of the being as based on reason, appears as a real norm for contemporary social justice theories (notably since Rawls, 1971), and a philosophical perspective should allow to both understand the foundations of such a paradigmatic approach and to foresee how to question them and investigate their validity. Of course, Sen himself and other social justice theorists did investigate the field of philosophy to think new approaches of distributive issues and above all, to include reflexions on central concepts, such as freedom, and we tend to further these analyses.

Thus, one central question that led this research work concerns the process of justification of this norm of equality as a fundamental demand of contemporary social justice theories, thus stressing the relevance of the concept of general equality regarding social justice issues.

However, one problem then arises with the general dimension of equality, that is its formal nature, as Chapter 3 will come to specify, after Chapter 1 and 2 introduce and develop the argument. Now, the settled object of justice being freedom, but not only as formal; in its real form, this brings a new question that puts again in perspective the idea of a tension characterizing justice. General equality is the necessary condition of possibility of freedom, but as formal it does not seem to be a sufficient one regarding *actual* freedom; then, what is the additional condition necessary to the effective realization of justice, the one that targets actual freedom? Sen's question, "Why equality?", that suggests the need to justify the choice of equality as the fundamental norm of social justice theories, involves understanding the mechanisms and arguments that led to this choice. Social justice asks the question of how to organize the distribution of resources, in order to reach a fair

state of things, that is, following our premises on freedom, in order to enable people to actualize their freedom. And this involves evaluating the relevance of the criteria of equality, but overall to determine its content. The issue of the content is actually at the heart of the discussions concerning distributive justice in political and economic modern theory. Indeed, Amartya Sen claims “Equality of what?” is the question that needs to be answered, *i.e.* what is the content of equality, the equalisandum that should be adopted in order to promote people’s freedom.

So eventually it appears that there is another central demand related to contemporary social justice theories, that is, somehow, to preserve and guarantee people’s freedom. Indeed, whether it be formulated in terms of capabilities (for instance in Sen’s), opportunity for welfare (for instance in Arneson’s), or else in terms of utility, etc., there always seems to be the basic presupposition that people must be enabled to choose and realize the kind of life they have reason to value—that is, a principle of individual freedom, or of autonomy. We thus have two fundamental aspects that must be integrated within distributive issues, equality and freedom, and when closely examined, they seem to reveal a tension, which will be the object of Chapter 1.

Freedom

Let’s have a closer look at the stakes of freedom regarding social justice issues. The notion of freedom has taken various forms throughout history and we assume it has to be thought of essentially as based on the conception brought by modern philosophy, that we determine as being mainly relying on the Kantian concept of autonomy (Kant, 1785; 1788) and Hegel’s account of the will (Hegel, 1807; 1820) that settle on the one hand, the capacity of people to self-determine and self-govern, and on the other hand to act according to their particular will, to emancipate their subjectivity. This shall involve both an individual and a social dimension of freedom. Indeed, the idea is to provide a comprehensive definition of freedom that would integrate the modern conception of the being, viewed not only in its private sphere but also considering its belonging to the public one, as a social being—that is, calling the question of recognition.

We can first briefly mention two great accounts of freedom, the one of Benjamin Constant (1879) who provides a distinction between the Ancients' liberty and the Moderns' one, in a speech uttered in 1819 at the Royal Athénée of Paris, and the one of Isaiah Berlin (1969) who separates negative from positive freedom. Constant offers an understanding of the evolution of the notion of freedom: the Ancients' freedom refers to a set of political powers as it mainly consists in exercising, collectively, but directly, some parts of sovereignty aiming at the realization of the good of the *polis*, that is a complete liability of the individual to the collective authority (1879 [1997], p. 594)⁴. On the other side, Moderns' liberty refers to the right to be subjected only to the laws (*Ibid.*, p. 593) and thus shows its commitment to values such as autonomy or self-determination. But overall, the definition Constant gives of it is actually an enumeration of private rights, so that it mainly appears as related to individual freedom in its negative sense, in the protection of particular interests.

The notion of negative freedom is properly accounted by Isaiah Berlin: it refers to the space in which the individual can do or be whatever he can and want to do or be, without interference (Berlin, 1969, p. 169). Positive freedom, on the other hand, refers to the source of that power, namely the possibility or capacity of the individual to do or be something (*Ibid.*). This conception of liberty interests us regarding the present stakes as it allows taking into consideration both the individual and the social dimensions of freedom. Indeed, on the negative side it acknowledges that people can achieve a wide range of things, that is the infinite power of the free will, but on the positive one, that people can be the source of it, that is self-determination. It also suggests, on the positive side, that the source of their achievements can be exterior: the institutions can provide for the missing opportunities or can remove some illegitimate interferences. Eventually, it seems that these distinctions should find a way of conciliation to foresee a comprehensive conception of freedom.

One issue also arises from the concept of freedom, that is, shall we distinguish it from the word "liberty"? Although we find some examples of authors who assert the relevance of a distinction to be made between the terms "freedom" and "liberty", we will rather adopt a view according to which both words can be used

⁴ Just as Hegel shows there is no place in the Ancient State for subjectivity to emancipate, as it will be question in Chapters 1 and 3.

indifferently, as, in the context of our reflexion, they refer to the same *concept*. Its meaning takes form throughout the whole reasoning and evolves as related to other ideas. Wolff (1997) has for instance claimed that “there is an important distinction between freedom and liberty” (Wolff, 1997, p. 346), that is two-folded: “not only [a] distinction between particular actions and types of actions but also between possibility and permissibility”, knowing that possibility refers to physical possibility and permissibility to the amount of types of actions permitted by the law (*Ibid.*, p. 352). The permissibility dimension refers to “liberty”, whereas the possibility of particular actions one refers to “freedom”. However, we shall not subscribe to such a distinction, in that it would, first make the whole analysis heavier irrelevantly, and because Berlin’s opposition between negative and positive freedom seems to have reached deeper conclusions before. And as mentioned concerning Berlin, those distinct meanings of freedom shall actually be somehow synthesized in one concept. Pitkin (1988) already pointed out that “almost all political theorists (...) assert or assume that the distinction makes no difference” (Pitkin, 1988, p.523) (although she develops in this article how this distinction is meaningful regarding Hannah Arendt’s concerns). Thus, we shall rather follow Cranston’s position that Pitkin also mentions, that is, “in English (...) the words ‘freedom’ and ‘liberty’ are virtually interchangeable”, (although he suggests that “‘liberty’ tends to be used in legal and political contexts, ‘freedom’ in philosophical and more general ones” (Cranston, 1967, p. 32)). The form, the word that is being chosen here does not matter so much to our sense, as, we shall see, the idea that is to be conveyed integrates many dimensions, and could also be referred to as by terms such as autonomy, self-determination, subjectivity emancipation, etc., regarding some specific perspectives.

Thus, going back to our conception of freedom or (liberty), and from the distinct dimensions examined notably through Constant and Berlin, there appears the need to combine several ones. Kolm (1996a) for instance explained that there exists “two groups of reasons” for valuing liberty: on the one hand, the “instrumental” values of liberty, *i.e.* freedom as a means to obtain a result from a chosen act, and on the other side, the “ontological-existential” values, *i.e.* freedom as the condition for a human existence—and this also refers, as he says, to the distinction between freedom for having and freedom for being (Kolm, 1996a, p. 35). We thus understand how freedom, as linked to a comprehensive conception of the being that

is not only determined by its arbitrary will, but also as a social being, must integrate some collective dimension, that are to be considered regarding social justice issues.

First, there is a social dimension as linked to the role of institutions, what Sen also called “the social commitment for individual freedom” (Sen, 1998). This aspect is linked to the notion of opportunity: it is mainly that dimension regarding which the State or society has a role to play, whether it be in concrete measures of compensation or in creating the formal (political, social and economic) conditions of access to a valuable life. And this is something on which Sen has insisted on throughout his works, while developing the notion of capabilities, especially when displaying what he considers to be the shortcomings of Rawls’ theory in terms of primary goods and of consequentialist doctrines such as utilitarianism and welfarism (Sen, 1980): the latter misses according to him people’s capacity of conversion of resources into well-being (that is, people’s actual opportunity of making use of some resources) and the former, while looking only at people’s *achieved* social situations, do not take the process of achieving these situations into account—so that the process of choice is lacking; the actual opportunities people have to realize a certain level of well-being, which constitutes a great part of their freedom is not acknowledged as an essential element that institutions should take into account in order to equalize people’s situations⁵.

The social dimension of freedom is also to be thought of in terms of self-development within a community: Rawls (1971) already expressed the need for people to be guaranteed the “social bases of self-esteem”, as taking part of his primary goods list, *i.e.* something that a rational being would necessary want and need in order to live a valuable life, no matter what he considers himself a valuable life is (Rawls, 1971, p. 92). Hegel also displayed this dimension of freedom, for instance through its lord and bondsman’s dialectics that expresses the need for people to be recognized as equals within the society in order to reach the completeness of their being, that is, according to Hegel, actual freedom. Finally,

⁵ Eventually, Sen will also acknowledge in the *Idea of Justice* (2009) that his own capability approach does not provide a perfect account of freedom as not exhaustive, because it misses the “procedural” aspect of freedom, related to the process of choice in itself and enables to evaluate the deliberate character of one’s decision (distinct from the possibility aspect, the actual opportunity to realize something, that is contained in the concept of capability) (Sen, 2003a, p. 32).

theorists of recognition, such as Axel Honneth, who falls in with Hegel's thought and whose arguments will also be examined in this thesis, develops a conception in terms of "social liberty". In *Freedom's Right* (2011), he tends, basing on Hegel's systematic framework, to rebuild the necessary conditions of individual freedom and details this view that social freedom involves people owing their freedom to the other members of the community. All of these elements regarding the social dimension of freedom come to settle a comprehensive definition that goes over a strict individualistic version of it, and this involves an exigent conception of the role of institutions.

Indeed, it is question of considering the more complete determination of the being to understand how freedom is to be determined itself and once again, we assume a tension is at stake: in Ancient times, the social sphere prevailed and the individual has been characterized as a pure political cipher whose essence is fully determined by the will and good of the community, whereas modernity has brought a conception of the individual as almost atomistic and whose freedom is to be achieved under the laws of free-market—his freedom being then considered as the satisfaction of his particular needs and desires. These of course are two conceptual, almost caricatured, extremes, that however led to political and social theories aiming at implementing the involved conceptions of freedom through the adequate institutions. Now, still in the sense of the tension, we argue for a dialectical way out of these two extremes, just as Hegel did when introducing civil society before the moment of the State.

One central stake of this thesis, as related to that question of tension then, is to promote the idea of recognition as a central one regarding contemporary social justice issues, and eventually acknowledge a sort of shift in the paradigmatic way of elaborating distributive theories. Fleischacker (2004) already raised this question:

"Rawls, his followers, and his critics have all been primarily concerned with the distribution of rights and material goods. In recent years, thinkers of various stripes have begun to ask whether it just might not require some sort of fair distribution of goods quite different from either rights or material things (...) some people have suggested that we need to consider the distribution of *symbolic goods* as well as political and material ones. If the reason we believe in distributive justice, after all, is that we think each individual must have the means to realize his or her capacities for action, then we may need to be

concerned about, say, whether an agent who identifies with a particular culture has the linguistic training to express his cultural identification or whether an agent who identifies as lesbian has access to a public space where she can freely express her sexual orientation”. (Fleischacker, 2004, p. 121)

The idea is mainly to introduce a reflexion on the scheme of distribution of “recognition capital”, that is a question which we will further investigate in the thesis (Chapter 3) thanks to Axel Honneth’s and Nancy Fraser’s thoughts. For now, Fleischacker adds that “the argument that individuals can realize their freedom only when their society provides them with favourable conditions for the development of their capacities can justify a call for a redistribution of ‘recognition capital’ as well as a call for redistribution of land, income, capital, or primary goods” (Fleischacker, 2004, p. 122), so that regarding actual freedom as the object of justice, the recognition issue might be as important as the one of distribution, and the idea of recognition is one of the most concerned by the one of the tension, notably between identity and difference. Jackson (2005) has pointed out the importance of Fleischacker’s *A Short History of Distributive Justice* claiming it is “a compressed but powerful argument for the claim that modern ideas about social justice are very different from earlier patterns of thought about justice” (Jackson, 2005, p. 359). Indeed, Fleischacker acknowledges the specificity of the “modern” concept of justice that insists on the “human” dimension of people in order to settle what the State has the responsibility to provide them (Fleischacker, 2004, p. 7-8).

Modernity

As the account of our definition of freedom started showing, the notion of Modernity is omnipresent in the reflexion, especially because it has reshaped this central concept and the conception of the being that is used in political thought. It is according to us, a time where this “tension” specifically expresses, and notably as operating the synthesis of the social (or collective, even universal) and individual aspects of freedom. Hegel (1820) already settled how the ethical life and more precisely the moment of civil society is characterized by both the principles of the universal and the particular, as an emblematic pattern of modernity, and we shall go further in this direction.

Citot (2005), in an article about the process of modernity as related to the condition of freedom, undertook the task of describing the main features of modernity, notably according to its philosophical aspects (although still mentioning details about history, arts, sciences, etc.). His account precisely goes in the direction we support as he defines modernity as the “historical possibility of freedom” (Citot, 2005, p. 36), and as being fundamentally characterized by individualism and universalism, making modernity the historical operation of social and individual freedom (*Ibid.*, p. 38). And he also sheds light on what we call the “tension”, saying that individualism needs universalism, without which it would be nothing but imprisonment in oneself, and that universalism needs individualism, without which it would be nothing but the negation of the human person (*Ibid.*).

Concerning its historical evolution, Citot suggests it is to be situated between the Renaissance and the Enlightenment, from the middle of the fifteenth century to the last quarter of the eighteenth century. It started according to him, with the Renaissance and Reformation, going then through the Scientific Modernity and the epistemological rupture it brought, starting with Copernic, then the philosophical modernity, starting with Descartes, and the modernity of political philosophy with Hobbes, Locke and the Enlightenment (*Ibid.*, p. 52-57). He then defines a “second modernity”, as lasting from the end of the eighteenth century until the 1960’s and as including economic and social disruptions, with the emergence of an industrial bourgeoisie and the social class of proletariat (*Ibid.*, p. 57-58).

Of course, it is mainly the philosophical dimension of modernity that interests us regarding our purpose, however, the other considerations, and especially the religious and epistemological aspects, do have their importance regarding the conceptions of society, of the being and of freedom that are at stake in contemporary social justice theories.

Now, as Citot points out, it is Descartes who marks the real turn of modernity in philosophy, especially regarding the fact he elaborates the new foundations of knowledge, as exclusively based on individual intelligence, thus asserting the primacy of human conscience and subjective reason, that is, the assertion of subjective autonomy and its capacity to reach the universal (*Ibid.*, p. 54-55). Concerning political philosophy, it appears that a political thought is to be said modern when it establishes man as the principle of political organization, so that it is no longer the natural order nor God’s will that reigns over it (*Ibid.*, p. 55). These

elements will be further deepened and investigated in Chapter 1, which considers the concept of equality and its necessity as related to modernity.

Eventually, what can be retained is that modernity represents a “significant turn in the history of the West”, and freedom constitutes its “spirit” (*Ibid.*, p. 35-37). Again, the tension is omnipresent, as for Citot explains that modernity refers to the emancipation from the collective, supra-individual, norms, that is, from universalism, but also from one’s “small” particular life and prejudices, that is emancipation from individualism (*Ibid.*, p. 37).

Corpus

Our inquiry will examine the thought of three main authors, and the literature that surrounds their works: Amartya K. Sen, G.W.F. Hegel and Emmanuel Levinas will be our three anchor points to analyse this tension.

Amartya Sen (1933 -) offers an original theory of justice, but most importantly interesting regarding the methodological and philosophical concerns it develops. He is one of the social justice theorists who has most deepened the question of freedom as the object of justice, tending at giving the most exhaustive definition and implementation of it, starting with his capability approach⁶. Now, the interest in focusing on Amartya Sen’s conception justice regarding the issue of equality is two-folded: first, from his address of the questions “Equality of What?” and “Why Equality?” (1980), we derive a distinction that is fundamental for the purpose of our thesis, between two dimensions of equality. Second, studying Sen’s views on equality constitutes a research question in itself aiming at revealing the central importance of the question “Why equality?” regarding social justice issues, while he claims that this question does not deserve that much concern in the process of solving distributive issues, that is of the reduction of inequalities.

The tension we mentioned at the beginning thus raises again: the two dimensions of equality that we shall develop further later on involves considering equality according to both a normative and a practical perspective, that involve

⁶ For instance, when asserting that “the capability approach to a person’s advantage is concerned with evaluating it in terms of his or her actual ability to achieve various valuable functionings as a part of living” (Sen, 1993, p. 30).

reconsidering the stakes of distributive issues as they are nowadays settled. Indeed, contemporary social justice theories focus almost exclusively on the quest of the right “space” of equality, without justifying this quest for equality. This is one issue this thesis tends to investigate. Amartya Sen especially, as we shall develop in Chapter 2, asserted “Why equality?” as the “poor man’s question” (Sen, 1992, p. 12). But again, we maintain the idea of a tension, that we assume is mainly understandable thanks to Hegel’s social theory and the normative categories he puts in perspective.

Indeed, it is G.W.F. Hegel (1770 – 1831) who enables us to really foresee this tension regarding social issues. In this thesis, we concentrate on his social and political theory, that is related to the philosophy of the objective spirit, as it is where we find the sphere of justice—that is, mainly in the *Elements of the Philosophy of Right* (1820). This moment is characterized by the contradiction between the universal and the particular, that we assume, have something to deal with the concept of equality. Besides, Hegel is of course the thinker of recognition, and his dialectical method enables to think how this concept shall be included in distributive issues. Finally, we consider Hegel as the thinker of Modernity: the institutionalization of civil society as a necessary condition for freedom (as associated—or let’s say, being in tension—with the State) is representative of how equality and freedom became paradigmatic values in the modern political thought. In that sense, Hegel, who is actually being referred to throughout the chapters, somehow constitutes the cornerstone of our argumentation. Indeed, as Charles Taylor (1979) notably mentioned, Hegel has powerfully contributed to the formation of concepts that are necessary to get a clear image of issues which are specific to our times (Taylor, 1979 [1998], p. ix).

However, another author has investigated very deeply this tension that puts equality and difference, or otherness, in the balance of social justice, and it is Emmanuel Levinas (1906 – 1995). The work of Emmanuel Levinas constitutes an alternative view of political and social issues in the sense that he offers a very different, original account of the being. His conception of justice is actually scattered throughout his philosophical works⁷, so that a sort of reconstitution process was necessary: his “theory” of justice is to be found mainly in the criticism

⁷ That we distinguish from his more religious oriented works, such as his *Talmudic Readings*, that we shall not investigate here.

he makes of what he calls the “Western” political philosophy, so that we get into a conception that basically calls into question the previous assertions. In that, Emmanuel Levinas’ work constitutes a turning point in the argumentation.

Outline of the Thesis

As said before, the starting point of our argumentation and the first question that led this research work concerns the process of justification of the norm of equality—in terms of general equality—as a fundamental demand of contemporary social justice theories. This reflexion is led according to four moments: first, it gets into the reason-based justification of equality that modern philosophy brought. Second, it develops the Senian argument of impartiality to settle equality as the norm of social justice theories. From then, it considers the insufficiencies of general equality as the condition of real freedom, according to the exigencies of recognition. Finally, it evokes Levinas’ criticism of the totalitarian dimension of the principle of equality, who nevertheless acknowledges its practical necessity from a political point of view, thus justifying it in a way.

However, as already mentioned, this question of the norm of equality and of justifying its necessity is to be considered within the whole frame of social justice that notably includes freedom as its object and a comprehensive account of the modern being, so that the real issue that arises is the one of the tension that characterizes the idea of justice. Indeed, justifying the principle of general equality shall not lead us to reduce justice to equality, so that the stake here will be to foresee how it shall overcome its contradictions.

The thesis is thus organized following four chapters, each investigating an argument for justifying general equality and at the same time shedding light on the various aspects of the tension that characterizes the idea of justice.

Chapter 1 establishes the relation of interdependency that determines the concepts of equality and freedom, starting from the idea that the norm of general equality results from the modern understanding of the being, that insists on the place of human reason, itself considered as the origin of freedom as an absolute value in the

modern era. This leads us to conclude that the content of equality depends on the value of freedom. This chapter thus aims at exploring the foundations of contemporary social justice theories' egalitarian paradigm, while assuming that the value of equality is intrinsically linked to the pursuit of liberty since modern philosophy. The starting point of this chapter is then the one of the criticisms which targeted the concept of equality as an "empty" one (Westen, 1982), in order precisely to show that its content relies on the one of freedom. Nevertheless, the long history of both concepts often opposed them, until the point of conceiving their relation as antithetical (for instance when considering the opposition of the liberal and egalitarian traditions⁸). This chapter thus postulates the idea according to which modern philosophy and its conception of the individual (notably through the Kantian and Hegelian theories) operate the synthesis, or even the "reconciliation" of both values. It is also the occasion to shed light on the justification of general equality as based on the argument of human reason, thus concluding on the interdependent relation of equality and freedom, that makes general equality a necessary norm regarding social justice issues, in that they aim at achieving freedom.

Chapter 2 examines the conception of equality developed by Amartya Sen through his own idea of justice, going deeper into the general/particular equality distinction, and thus clearing up the justification of general equality as based on the requirement of impartiality. Starting from the question he considers crucial regarding social justice theories, namely "Equality of What?", the evolution of his own conception of justice reveals another essential problematic, that is "Why

⁸ To illustrate the difference between the two traditions we can refer to Fleischacker (2014) who gives an interesting account, basing on Rawls' position, put in middle: "Thinkers to Rawls' left have argued that only strict equality allows for equal citizenship or properly reflects the equal worth of every human being, while thinkers to Rawls' right have argued that only a guaranteed minimum is required by equal respect for all human beings and that inequalities above that baseline have a variety of social or moral advantages" (Fleischacker, 2004, p. 117). This view, although probably somehow caricatured, is interesting in the sense that it would integrate luck egalitarians to the liberal tradition: once individual responsibility is determined then all inequalities resulting from beyond its limits is the individual's business, whether it be in his advantage or not. Kymlicka (1990) has also suggested a quiet schematic account of the difference between egalitarians and libertarians, saying that our traditional western perception of the political landscape distributes political ideas on a line that goes from the left to the right, and that people on the left believe in equality, so are socialists, while people on the right believe in freedom, so favour capitalism (Kymlicka, 1990 [2003], p. 8).

Equality?”. This question involves, as seen, a more general idea of equality, and the analysis of the “egalitarian formula” as Sen puts it, leads to foresee equality according to a normative perspective. Equality is linked to the demand for impartiality and, in that sense, is settled as a conditional principle of any normative theory or ethical judgement. But, as already mentioned, we find in Sen’s the expression of two forms of equality: one, that he explicitly develops, in terms of “space” and that refers to the determination of the variable that shall be equalized among the members of society, in order to answer the question “Equality of What?”; and the other, more implicit in Sen’s, that refers to the question “Why Equality?” and leads to general equality. This chapter thus sheds light on this distinction and deepens the understanding of the second acceptance. Moreover, this analysis eventually reveals that the demand for impartiality, as developed by Sen and that justifies the norm of general equality, involves the relevance of the transcendental approach for his own idea of justice, although he rejects it in favour of the comparative method⁹. In the end, general equality again reveals necessary, even for theories which shall not ask the question “Why Equality?” and relates to the reason-based argument developed in Chapter 1.

Chapter 3 starts over from this idea that general equality as the condition of impartiality is a fundamental principle for any theory of justice. Now, this norm of equality, that results from the questioning “Why Equality?”, is characterized by its formal and general nature. It is in that sense that this chapter tends to show that this idea of general—or formal—equality can only be achieved within the frame of an institutional context, in that it is question of some artificial, constructed, form of equality, that supposes a mediation between the private parties. This involves a process of recognition that we shall call “objective”, in the sense that it is question of objectivizing individual and personal situations, in order to establish a structure of symmetry in the intersubjective social relationship. The private parties are thus

⁹ These two approaches can already be briefly defined in those terms, although they will be deepened later in the chapter: the comparative tradition, or “realization-focused comparison” approach consists in elaborating a ranking of actual social states, by comparing them, in order to reduce unfair inequalities, while the transcendental method, also called “transcendental institutionalism” tends to answer the question “what is a just society?”, looking for the ideal characteristics of society and perfectly just institutions, that Sen essentially criticizes for its abstraction that occults the actual claims of people in terms of inequalities, poverty, exclusion, freedom deprivation, etc.

perceived only from their legal essence, in the *suspension* of their own subjectivity, which enables the recognition of their equal moral nature, of their autonomy. This process constitutes a first step toward the realization of freedom, as the object of social justice—a *necessary* although insufficient condition as it appears: here are raised the insufficiencies of general equality, and thus the necessity to examine and preserve the *tension*. Indeed, it is in relying on Hegel’s analysis of the ethical life that appears the necessity for subjectivity to emancipate within the institutional sphere: the *persons* must be able to follow their own interest and choose the principles of life they have reason to value, and this implies for the institutions to consider their differences in terms for instance, of opportunities to realize them. Exploring the dialectics of the universal and the particular as it appears in the Hegelian thought, and that is later raised in contemporary theories of recognition, this chapter concludes on the complementary nature of the objective and subjective dimensions of recognition in the frame of contemporary social justice theories, and also notably for Sen’s conception of justice in terms of capabilities.

The fourth and last chapter of this thesis investigates the political “theory”¹⁰ developed by Emmanuel Levinas, as founded on his original conception of the being, that suggests the “responsibility for the Other” is the principle of subjectivity and freedom. The specific concepts of the “ego” or the “same”, and of “Other” are central in his conception of justice and their analysis leads to foresee the idea of justice according to two different dimensions in Levinas’. This chapter thus shows that the concept of “same” involves a political perspective of justice, based on the norm of equality, whereas the concept of “Other” refers to a metaphysical, or ethical form of justice, that relies on the principle of Alterity, or even of Exteriority. It is thus question to shed light on Levinas’ conception of justice, in the sense that it is not clearly expressed in his works and that he implicitly discloses his criticism of the political dimension of justice in them. The mode of being that Levinas calls the “same” refers to a process of identification to oneself, where the will only exists for itself and in sight of itself, so that Levinas calls the same a “Totality”. The “Other” precisely comes to introduce an absolutely exterior

¹⁰ It is indeed ambiguous to speak of a political “theory” in Levinas’ in that it is scattered throughout his works. It is thus rather implicit et gets revealed in the course of its philosophical works.

presence in this mode of being, which is impossible to alienate. It relies on the idea of transcendence and evokes “Infinity”, as opposed to Totality. It therefore involves a relationship based on the asymmetry between the same and the Other—the “ethical relationship”. Now, it is this idea of responsibility for the other that reveals, according to Levinas the truth of the being and thus constitutes the foundation of justice. However, his conception of justice is then to be understood in the sense of a justification of the being, according to an ethical perspective, and thus a form of justice that is strictly non institutional. This is how we discover in Levinas a deep calling into question of liberal individualism on which rely according to him modern social justice theories, notably since Thomas Hobbes, with a conception of freedom that is essentially based on the arbitrary and spontaneous nature of the will. He thus tends to operate a reverse in the structure of subjectivity, whose true starting point shall be not in the same, but in the Other. This analysis thus allows foreseeing an original, and somehow troubling for modern philosophy, way to think of the modes of being and thus to determine the essence, the content of justice, which finally appears as two-dimensional. The interdependent relationship of equality and freedom asserted in the first chapter is thus called into question by Levinas’ conception of the being, however, his criticism admits the practical necessity of political justice, thus asserting a form of justification of the egalitarian norm. This chapter finally shows the necessity of equality while insisting on the fact that the tension must be preserved, in order to avoid some kind of radical conception.

Finally, the common theme explored in this thesis, the issue of the tension, appears according to different forms and reveals the need to preserve it in order to prevent justice from being applied in some forms of extremes. Equality and freedom, general and particular equality, objective and “subjective” recognition, the universal and the particular, the same and the Other: they are as many principles that integrate social justice issues and that reveal the dialectical nature of justice.

CHAPTER 1

Equality and Social Justice: A Modern Concern

This chapter investigates the growing interest democratic societies and western political thought have accorded to equality as related to the ideal of individual freedom, since the advent of modernity. We argue that the conception of the individual that modernity brought has founded the normative character of equality while settling individual freedom as an object for contemporary social justice theories. Indeed, although the history of economic and political thoughts has mainly opposed the values of equality and liberty, equality nowadays constitutes the social structure required for achieving people's freedom—knowing the definition of freedom has overcome its strict negative traditional comprehension, notably including autonomy or self-determination. This conjoint concern for both equality and liberty as paradigmatic values seems to find its climax in democracy, and this first chapter aims at showing how contemporary theories of justice have recently faced a new understanding of equality, no longer as a particular space, but as a general condition for justice, as it appears in conceptions such as “relational” or “democratic” equality. We consider this general demand of equality to result from the modern “reason-based argument”, that is the acknowledgment of people's equality in some fundamental sense because of their shared rational nature.

SECTION 1. Introduction

One central issue to be treated in this work is that the concept of equality appears to be problematic in itself: its definition has continuously evolved throughout history and presents specificities or ambiguities according to the field, the discipline in which it is mobilized. Its normative character involves disagreements regarding its application that have been at the heart of discussions and theories over time, as Jeremy Waldron, both a jurist and political philosopher, for instance claims:

“That humans are all one another’s equals, and that this makes a difference to how we ought to deal with each another and how we ought to organize ourselves legally, politically, socially and economically—this has been one of the enduring themes of Western thought for at least the past two thousand years.” (Waldron, 2017, p. 8).

There is thus a very long tradition over the question of equality, that nowadays focuses on the space that should be promoted, regarding social justice issues. Equality is indeed central to contemporary theories of justice (Dworkin, 2000; Sen, 2009) but it is there often considered in the perspective of the equalizandum, that is, it is always equality *of something*. Of course, this “something” raises debates about the right space of equality to be promoted. However, there is another dimension of equality, that is a more general one, that precisely appears in Dworkin (2000) and Sen (2009). Some call it equality of treatment, equality of consideration, prescriptive, or else formal equality—namely a basic principle that calls for an equal concern of all particular interests. But although the discussion over the right “space” of equality seems completely legitimate regarding social justice issues, whether it be in the field of law, philosophy, politics or economics, the more general idea of equal treatment has been the target of heavy criticisms concerning its excess of abstraction or even its lack of content. However, some still defend this idea of equality as absolutely fundamental and necessary, so that there is a need for justifying equality as a norm for social justice, and for clarifying its content and relevance. The main assumption in this chapter is that the abstract norm of equality is the result of our modern understanding of the being, that insists on human reason—involving both rationality and morality—that is itself the source of

freedom as an absolute value, so that we shall conclude that equality's content depends on liberty.

The present chapter thus aims at understanding the foundations of the contemporary social justice's egalitarian paradigm and assumes that the value of equality is intrinsically linked to the pursuit of freedom since modernity. That is what we tend to show, basing on the hypothesis that the choice and elaboration of a theory of justice largely depends on the conception of the individual, even of the being, that is being embraced. We start, in section 2, with the criticisms targeting the lack of content of the concept of equality: Peter Westen (1982) has for instance settled it as an "empty" concept, while Axel Honneth asserts it is "not an independent value" (Lysaker, 2015, p. 267), although equality plays a major role in his theory of freedom and recognition. A second problem after the "emptiness" critic arises: some classical economic and philosophical theories, but also contemporary conceptions of politics settle equality and liberty as antithetical values, while we view them as interdependent, and this issue will be the object of the third section. From then, we will tend to operate the "synthesis" or even the "reconciliation" of both values: section 4 shows how the modern conception of the being as rational (mainly from Kant and Hegel) founded the desire of equality on the acknowledgment of people's autonomy, and section 5 suggests democracy as the element of reconciliation.

Eventually, observing the essential relation of equality and freedom in the modern western political thought, we will join Honneth to argue that the content of equality depends on the value of liberty as the object of justice. We base this conclusion on the conception of the modern individual, mainly issued from Kant and Hegel's thoughts, putting forward autonomy and free-will as essential characteristics of the human being, which constitutes, at the same time, elements of justification of the norm of equality. However, this reasoning should lead us to conclude to the instrumental nature of equality—what shall bring us to a limit, even a paradox, as we assume in Chapter 2 the even transcendental dimension of equality as related to contemporary social justice theories.

SECTION 2. The Content of Equality

As noted in introduction, the concept of equality has been largely debated over time and disciplines. Political and economic sciences, philosophy, and law offer a great discussion on the nature of this value that is usually asserted as a fundamental one regarding any normative questioning. Now, concerning social justice issues, equality raises several questionings, notably concerning its content, or even its relevance. While some theorists, especially in the field of law (Kelsen, 1957; Lucas, 1965; Westen, 1982), have argued equality is an empty or superfluous concept, some still advocate for its foundational importance and aim at justifying it as an imperative norm, notably for moral considerations that tend to support an egalitarian perspective of distribution and recognition, as for instance Anderson (1999) with her account of “democratic” equality. However, the debate sometimes seems confusing as different perspectives of equality are raised in, and a distinction should be brought to better understand the problem of emptiness or irrelevance. Indeed, it is not always clear whether theorists mobilize the concept of equality as formal and abstract, or specific (as it is in the determination of the equalizandum or the “space” of equality), as normative or descriptive. This analysis of the use of equality shall lead us to question the validity of the argumentation that asserts its emptiness, in order to show equality is not irrelevant regarding social justice issues but rather appears as a dependant value.

2.1. An Empty Vessel

From Aristotle and proportional equality (*Nicomachean Ethics*, 349 B.C.) to John Rawls and a conception of equality in terms of resources (*A Theory of Justice*, 1971), the concept of equality has been awarded various definitions and contents in the field of distributive and social justice issues. Whether it concerned what kinds of goods should be equally allocated to people or in what respect people should be considered equal, the definition at stake varies, so that we end up with a puzzling concept, although it is more and more asserted as a fundamental, even imperative

norm to treat questions of distribution¹¹. Thus, we have an omnipresent concept, but for which one can hardly settle one definite, fixed definition and this led several theorists to criticize its lack of stable content. Although some still argue in favour of the necessity of an abstract and formal conception of equality for any normative theory, the end of the twentieth century has seen the emergence of a line of thought aiming at rejecting it for this reason.

One striking attempt to show equality's lack of content is Peter Westen's "The Empty Idea of Equality" (1982) which concludes that regarding its empty and unnecessary character, equality is an "idea that should be banished from moral and legal discourse as an explanatory norm" (Westen, 1982, p. 542). Chemerinsky (1983), in an article aiming at showing that Westen's conclusions are not entirely proven, insists on the fact that equality is necessary in several dimensions (namely morally, analytically and rhetorically¹²), but however argues that it is indeed an insufficient concept (Chemerinsky, 1983, p. 576). We would rather follow this view, though not arguing in the sense of insufficiency but of dependency, after a short examination of Westen's argumentation.

The specific conception of equality that is at stake in Westen's critic is the one that he calls "prescriptive", namely the principle according to which equals are entitled to equal treatment, that is the one we introduced as general or abstract equality, or else "equal consideration" or "treatment". One of his arguments directly targets the rhetoric of that principle, as "tautological" and "circular", which makes according to him the concept of equality an "empty one": equality "tells us to treat like people alike; but when we ask who 'like people' are, we are told they are 'people who should be treated alike'. (...) Equality is an empty vessel with no substantive content of its own" (Westen, 1982, p.547). Here, Westen takes the narrow conception of equality as a presumptive principle and seems to criticize its formalism. It is indeed the remark that Greenawalt (1983) made in his response to Professor Westen: "As to the formal principle, I show both that Westen conceives

¹¹ For instance, in Anderson (1999), Fraser and Honneth (2003), Sen (2009)

¹² "Equality is *morally* necessary because it compels us to care about how people are treated in relation to one another. Equality is *analytically* necessary because it creates a presumption that people should be treated alike and puts the burden of proof on those who wish to discriminate. Finally, the principle of equality is *rhetorically* necessary because it is a powerful symbol that helps to persuade people to safeguard rights that otherwise would go unprotected." (Chemerinsky, 1983, p. 576)

it too restrictively and that he fails to acknowledge the normative import that is to be found even in his own crabbed version”; “the idea of equality is much richer than he acknowledges” (Greenawalt, 1983, p. 1168). We share this position, thinking that it is precisely as formal that equality has meaning in its prescriptive dimension—as normative. Indeed, if prescriptive equality were to specify who are “like people” or what “like treatments” are, it would not be general equality but the determination of a specific space of equality. As formal and general, equality must stay *a priori* to ensure the conditions of impartiality, as we shall see more in details in Chapter 2.

Daniel Lyons (1966) has also targeted the “weakness of formal equality”, *i.e.* the maxim “treat similar cases similarly”. He criticizes the idea of “substituting a presumption of equal entitlement supposedly derivable solely from the reasonableness of treating similar cases similarly” saying that “this is not enough” (Lyons, 1966, p. 148). Here, the argument of insufficiency is again at stake. But, as said before, we tend to show that the problem is not that equality is insufficient but depends on another value, that is liberty: it is as examined and performed through the prism of freedom that equality has content and meaning, so that it also depends on a context, a context that determines the view of liberty which is to be adopted. For instance, we shall see how, in Ancient Greece, equality and liberty were intrinsically linked and that the conception of liberty as citizenship excluded some people from the participation of the public life and other social activities so that people who were not free were not equal. We start seeing that equality and liberty, in some sense, can also be said synonymous, and that, I believe, is not a fact that deprive those concepts of their meaning or content as Westen seems to suggest (1982, p. 542), but on the contrary, is rather significant about their essence and of their context of interdependency.

2.2. A Distinction

This idea of dependency is however the object of Westen’s critic, as he argues equality’s emptiness results from its necessity to rely on other *external* concepts or values to get content and composure:

“The endurance of the principle is due to the fact that it is empty of content. For the principle to have meaning, it must incorporate some external values that determine which persons and treatments are alike, but once these external values are found, the principle of equality is superfluous. Worse, equality tends to cause confusion and logical errors.” (Westen, 1982, p. 537)

This leads him to assert that “the rhetoric of equality should be abandoned” (*Ibid.*). However, there are two issues at stake here: first, there appears the implicit distinction made between particular and general equality—the mentioned “external values” refer to the determination of the space of equality—those values being for example resources, opportunities, primary goods, capabilities, etc. But the distinction is implicit in the sense that Westen does not seem to perceive the specificity of formal equality comparing to the idea of space of equality that is necessarily an equality *of something*. Second, and this refers to the second part of the argumentation: we find in Sen (1992) the same kind of reasoning regarding the superficiality, even the theoretical uselessness, of the concept of equality—or rather of the need to justify its use—once the question of the space, of the “something” is solved—so that equality would exist and be relevant only through its qualifying term. This argumentation leads Westen to conclude that “the presumption of equality is essentially meaningless” (1982, p. 537), while Sen argues in *Equality Reexamined* that answering the question “Equality of What?”—namely, determining the external value that constitutes the equalizandum—is enough to solve the issue “Why equality?”, which involves considering the latter as dependent from the former.

Indeed, after distinguishing the two questions, “Equality of what?” and “Why Equality?” in his Tanner Lecture (Sen, 1980), Sen seems to consider the latter as being of little importance regarding distributive issues and claims that only “Equality of what?” is really worth treating, and that “Why equality?” rather “looks very much like the poor man’s question” (Sen, 1992, p. 12). Chapter 2 will be the occasion of a deeper analysis of this account but as for now, we shall insist on the fact that here, Sen claims that economists and social justice theorists should not be concerned with answering the question “Why equality?”, and thus clearly

evacuates the issue in *Inequality Reexamined* (1992)¹³, which in a sense joins Westen's argumentation about equality's emptiness as a general and abstract concept.¹⁴

Now, this distinction between specific and general equality is important for our purpose as it leads us to assume equality is not an empty concept but a dependent one. Indeed, we tend to show that its meaning and content rest upon its relationship with another value that is liberty, however liberty shall not be considered as an "external value" but an almost intrinsic one. As the question "Equality of what?" puts in perspective, equality's content is determined by the space a theory defends (it might be freedom or something else), so its meaning is obviously dependant on the chosen space, that comes to fill it in a way. But the stake is higher concerning the dimension of equality that is involved by the question "Why equality?", related to its formal and abstract sense. We assume it relates to the sense Westen gives to prescriptive equality, but that its meaning is to be found in the concept of freedom, as we shall see in section 4. However, before asserting the intertwined relation of equality and liberty, we shall face one other issue that is the historical opposition of both values regarding certain foundational theories of modern economics and philosophy.

¹³ However, a close examination of his *Idea of Justice* (2009) seems to show that he implicitly cares about this more fundamental perspective of equality, notably as related to the demand of impartiality (See Chapter 2).

¹⁴ Scheffler (2003, p. 17) and Carter (2011, p. 142-143) among others, have also rejected this reasoning that assumes the lack of interest of justifying the basis of equality.

SECTION 3. An Antithetical Relation?

The values of liberty and equality have sometimes been considered as opposed ones throughout history, and still in contemporary politics with the debate opposing liberalism and egalitarianism—or more schematically, theories which valorise freedom as the essential value and those which favour the achievement of a state of equality. We will briefly go through this opposition, notably as it appeared in some economic doctrines that considered equality as being related to the intervention of the State and was rejected as such: when considering social issues, economists such as Léon Walras¹⁵ or Friedrich Hayek for instance called into question, according to their respective arguments, the role of state intervention, mainly suggesting equality prevents freedom (especially individual freedom as seen from a market perspective) from being achieved. This pattern of opposition seems to have persisted until contemporary times as we still find a structure opposing liberalism and egalitarianism, or rightist and leftist movements according to whether they value liberty or equality as the end of justice.

3.1. Freedom and Equality as Contradictory Values: Free Market and State Intervention

When looking at the classical and neo-classical economic tradition, there appears one great source to illustrate the reject of equality by theorists in the name of freedom: generally speaking, equality represents a kind of evil that might prevent individual freedom from being achieved, mainly because it involves state intervention. Those doctrines settle that the structure of market must be completely free and freed from any institutional influence, as it might jeopardize efficiency. Some consider the structure of free-market as being the one of justice, mostly because they promote desert as the criterion of fairness, as Walras (1896) seems to show. Others, for instance Hayek (1944; 1960) offer a conception according to which inequalities that are generated on the free market are fair ones, because

¹⁵ Walras however calls himself a socialist, and his theory a “synthetic” socialism, as integrating both socialism and liberalism (Walras, 1896). He tends to both reach a higher production of social wealth and realize a fair distribution of this social wealth.

individuals on the market are free and that is the sufficient condition of justice, so that no equality should be sought in that sphere.

However, Walras actually describes a kind of egalitarian ideal, that one could relate to what we nowadays call “luck egalitarianism” (Anderson, 1999), but which must intervene only in the sphere of “commutative” justice, namely the one that structures exchanges (prior to) providing all market participants with the same starting opportunities. However, under the order of “distributive” justice, no principle of equality shall intervene: distributive justice is the one that structures competition ensuring that all competitors get what they deserve according to their own personal efforts (Walras, 1896, p. 60). This equality of fortune should, according to Walras, realize people’s freedom and allow them to achieve what they want for themselves in the private sphere, under the rules of a distributive justice that rejects the principle of equality. Thus freedom is associated with inequality in Walras’ thought as freedom is achieved when people can express their own personal destiny—although it is *conditioned* by commutative justice, that is to say by a principle of equality. Eventually, Walras offers a vision where the principles of equality and freedom are presented as opposed values, in the sense that state intervention, that is, the quest for equality or at least the reduction of inequalities, shall not intervene in the market sphere, that is, the space of freedom (as individual—Walras insists on the “personal” and “particular” dimension of people’s destiny). But, as we just pointed out, commutative justice settles the condition of distributive justice in Walras’, that is, equality appears as the condition of possibility of freedom.

On his side, Hayek seems to make even less room for a possible link between the values of equality and freedom. He justifies the necessity of free market by distinguishing the systems of *Taxis* (voluntary created organisations by people) and of *Kosmos* (a system that results from human actions but not from the deliberate and conscious will of creating it). Now, the market is assimilated to the order of *Kosmos*, the spontaneous order, just as any great social institutions. And Hayek shows that, as such, the market is efficient, so that state intervention is useless and dangerous: regulation might bring change into the information mechanism and so in the agents’ behaviour. Now, Hayek defines freedom as the absence of coercion: no human being can become the means of someone else’s will, so that we have a classical modern conception of liberty that includes this idea of free will, but seems

limited to it. And for him, social justice constitutes a threat on individual freedom and well-being (Hayek, 1944)—knowing he targets the quest for more equality when speaking of social justice (through the redistribution of resources notably). As non-coercive, the market does not affect people’s freedom: to be coercive an action must result from a deliberate intention, now, the market results from the spontaneous order, so that it involves no intentionality. Moreover, without intentionality an action cannot be said just or unjust. Eventually, Hayek also seems to associate freedom with a state of inequality, saying that the equality before the law that is required by freedom, leads to material inequality (Hayek, 1960, p. 87). This antithetical relation of equality and liberty thus seems to come from a recurrent liberal argument against state intervention, notably on the results of the market. Indeed, the establishment of equality needs the intervention of institutions, so that, in a classical liberal conception, equality appears as being in contradiction with freedom—as in the more the State intervenes in the private sphere, the less people are free. A conception that seems to admit that equality is even perverse, as it *prevents* people from being free—that is the classical conception of liberalism that seems to assert that freedom can only be found in difference, so in inequality. However, as we see with Walras’ account of commutative justice for instance, there is nevertheless the idea that equality might have a role to play regarding freedom, as his rather luck egalitarian conception involves state intervention to settle equality at the beginning of the “race” for it to be considered fair, and for people’s freedom to be able to express thereafter. Equality appears then as the condition of liberty, so that it gets, in these kinds of “starting gate theories” of justice (after Anderson’s words, 1999), utility and meaning, *as related to freedom*. Concerning Hayek’s conception of the contradictory relation of freedom and equality, we shall mention that it takes place in the specific epistemic frame of methodological individualism: in *Scientism and the Study of Social Sciences* (1944), he criticizes the bias or even the prejudice involved by the application of hard sciences methods to social sciences issues that happened in the first half of the nineteenth century¹⁶. This “new attitude”, that rapidly became an “extraordinary

¹⁶ Thus, mainly targeting neo-classical doctrines related to the marginal revolution, although they conceive of society in an individualistic perspective where the agent is rational and acts in sight of his personal interest: Hayek, and his colleagues from the Austrian School, consider that a social phenomenon must be studied from the point of view of the individual acts

fascination”, led, according to him, to a “tyranny” of methods and techniques inappropriate to the understanding of social phenomena (Hayek, 1942, p. 268). This reject of scientism made him favour methodological individualism that mainly asserts that individuals are at the origin of the social order in the sense that their actions always have an intentional character, as they tend to realize their own interest, however, they do not foresee the consequences of their actions at the social level; their will is only particular, so as their intention, so that what is being socially created was not willed per se. It is the aggregation of individual actions that generates economic and social phenomena, so that, in order to study those phenomena, one shall first examine individual agents’ behaviours. This leads him to reject any form of holism, but also to consider the individuals as perfectly rational, acting as strict *homo economicus*¹⁷. The individual thus acts only in sight of his own particular interest and has no power to influence the collective state of things. Now, we also know that Hayek stood against Hegel’s social and political theory, that he designated as the “fountain head of most of modern irrationalism and totalitarianism” (Hayek, 1973, p. 32). His rejection of what he also calls “collectivism”, of any epistemic position that would integrate a collective or social point of view is, I suggest, the reason for his refusal of any form of equality, and thus his conception of freedom and equality as being contradictory values. Indeed, refusing the collective level involves the irrelevance of the concept of equality, as being equal necessary implies the existence and recognition of a collective dimension, for comparative needs. Thus, we shall argue that his fight against social justice aiming at the reduction of inequalities may be biased by his strong epistemic position.

Moreover, we shall follow the idea developed by Ege and Gillig (2018) that restricting the value of freedom to the only economic sphere leads to inconsistencies and defects: the authors consider Hegel’s (and Mill’s) definition of freedom as being more consistent in comparison to Hayek’s one, mainly because it

that generated them non intentionally. In that, using mathematical demonstrations shows irrelevant according to them, as they cannot account for the complexity of individual motivations. They mainly reject the idea that social structures and institutions can be represented as autonomous agents or beings.

¹⁷ Although Hayek’s work also presents the specificity of including the dimension of knowledge into his conception of the individual, as it is mainly developed in “Economics and Knowledge” (1937).

goes over the only consideration of the market as the relevant sphere of freedom, that is, including the collective and social dimensions of freedom, thus revealing a more comprehensive acceptance of it, that we shall further develop in Chapter 3.

3.2. Liberalism vs. Egalitarianism?

Considering more recent times, it is worth noting that the opposition between liberty and equality has persisted over time. Indeed, contemporary western political thought still seems dominated by this separation that rules the structure of political life. Kymlicka (1990 [2003], p. 8) notes for instance that our traditional western perception of the political landscape distributes political ideas on a line that goes from the left to the right, and that people on the left believe in equality, so are socialists, while people on the right believe in freedom, so favour capitalism. He adds that this view is less and less close to reality. This debate between, let's call them liberalists and egalitarians, nevertheless, assumes their respective fundamental values—liberty and equality—as incompatible, so that there would be no possible rational resolution (*Ibid.*, p.9).

Kolm (2006) went even further in the description of this opposition saying that:

“For centuries, the dispute in political philosophy has centered around the question of whether liberty and equality are opposed values or identical ones, with ‘rightists’ arguing that equality kills freedom, and ‘leftists’ replying that actual freedom requires equality. (...) The point is that both liberty and equality are properties rather than resources—they are of (or from) something—and that they are neither values in the same category nor even often genuine end values of social ethics. Indeed, even when they are not clearly ethically instrumental structures (such as liberty for implementation and equality for peace), equality results from rationality by the particular structure noted in chapter 2¹⁸, and basic liberties or means are necessary for the mere existence of agency. Then, we have noted, the general form of respectful justice is *prima facie* equality of liberty in the broad sense, with adjustments of various possible types to jointly accommodate several types of these freedoms, powers, means, or ends. This, however, still leaves *a priori* a rather large choice.” (Kolm, 2006, p. 476)

¹⁸ “Equality is not an arbitrary ethical stance. On the contrary, its essence is non-arbitrariness, and it is not an ethical position but a logical requirement of rationality in the normal sense of ‘for a reason’” (Kolm, 1996b, p.35). See also Kolm, 1993 and 1990.

However, this passage shows that he suggests a path of reconciliation. Elsewhere (Kolm, 2007), he expresses the difference between liberals and egalitarians as follows: according to him, liberals consider people's "social" liberties to consist in the absence of interference, so that they are maximal and equal for all and once this equality is thus settled, people are considered responsible for their own choice; whereas egalitarians view freedom as "total", meaning it must include the means that are necessary to actualize social liberty (Kolm, 2007, p. 44). We will see later that this opposition rings a bell to Anderson's critique (1999) against luck egalitarianism that one could assimilate to the liberal line of thought in that sense. Moreover, what finally appears in this liberal–egalitarian opposition, is that the fact of separating liberty from equality is recurrently generated by a strong importance accorded to the notion of responsibility, that is central especially in theories of luck egalitarianism¹⁹.

Eventually, the antithetical relation of the values of equality and liberty does not seem that much relevant: it might have some concrete echo in the western political life of existing parties, but looking closer at theories of justice, whether they claim to be of liberal or egalitarian vein, all seem to accord a great importance to people's liberty, often as the object of justice, and to the principle of equality, in some form. For instance, Dworkin, who is considered to be one who opened the path to luck egalitarianism after he drew the distinction between "option luck" and "brute luck"²⁰, has also developed a view on equality as prescriptive (equality of treatment) that makes it the fundamental principle of any normative theory (Dworkin, 2000).

¹⁹ The use of tools such as the justice cut enables to settle what kind of goods shall be distributed but overall what kind of situations shall be compensated by the institutions: once some situations are determined as not falling under the individual responsibility of people, then it is considered the duty of society to compensate for inequalities that result from these situations. Moreover, as in Walras' conception, once the situations considered as being not of people's responsibility are compensated, then society is considered fair.

²⁰ Luck egalitarianism aims at neutralizing the effects of chance, so that it distinguishes between two types of chance in order to determine whether an individual is responsible for what happens to him or not, or whether society should compensate for his bad luck. "Brute luck" thus refers to necessary events, that no one could have prevented from happening, or for which no one could have anticipated the results, that is, on which we do not have any power of control, so that they are considered off responsibility. On the other hand, "Option luck" designates an event which is not completely off the individual's responsibility: it rather refers to a deliberate risk, whose effects could have been anticipated.

Of course, it is not enough to observe that liberty and equality may not be antithetical by nature in order to assert their interdependency as values of social justice. But we aim at solving this paradox, basing on different elements: we shall now examine the modern conception of the individual, that is elsewhere an argument of justification of the egalitarian paradigm, as based on reason, and democracy, as a concrete way to operate the synthesis of equality and liberty, to show how modernity and democracy operate this reconciliation.

SECTION 4. The Modern Conception of the Being: Freedom, Equality, and Reason

Despite this recurrent opposition of the values of liberty and equality, some theorists seem to have acknowledged or at least suggested their interdependency, notably since the advent of modernity, understood as the time of the rational and free being, who becomes the starting point of any process of knowledge. First, it is interesting to note that there are divergences concerning whether liberty or equality is the characteristic value of that time: the historian Lord Acton for instance, claims that “equality constitutes the chief legacy of the Revolution” (McNeill, 1967, p. 297) in some place, and elsewhere that the “constancy of progress, of progress in the direction of organised and assured freedom, is the characteristic of Modern History” (*Ibid.*, p. 400). Tocqueville (1840) has also showed the importance of the equalization of conditions regarding modern democratic societies, arguing that the desire for liberty has always been present, although the “particular fact that singles out those centuries is the equalization of conditions”, it is the “main passion” of men in those times, “the love of this equality” (Tocqueville, 1840, p. 120).

Other philosophical conceptions have accorded importance to the antithetical relation of liberty and equality but rather as relying on it in order to draw a synthesis from it, and we argue it is notably the case for Hegel who, in his account of the ethical life (*Sittlichkeit*) in his *Principles of the Philosophy of Right* (1820), operates a movement of reconciliation of the two values in the moment of the State, through the one of civil society.

But first, we shall insist on the fact that modernity in philosophy is above all marked by the central place of human reason. The idea of showing that equality and liberty are closely related concepts and even interdependent in the field of social justice is based according to us on the modern conception of the individual, which arose with René Descartes²¹ but reached its most exhaustive definition and what it involves regarding social and political considerations with Immanuel Kant’s thought.

²¹ Followed by Hobbes, Locke, Hume, Spinoza and Leibniz for the most important ones.

4.1. The Reign of Reason and Subjectivity

Modernity can indeed be said the “reign of reason”, as the great turn that happened there consists in relocating the scientific or epistemic point of view. God is no longer the only holder of the truth; human reason directs the process of knowledge from now on: “With the decline of coercion the claim of Conscience rose, and the ground abandoned by the inquisition was gained by the individual” (Lord Acton *in* McNeill, 1967, p. 400). Truth is then defined as what can survive a critical exam of the reason, so that subjectivity gets an important role regarding knowledge. And this change of paradigm, that makes reason a metaphysical foundation of knowledge involves a new hierarchy of values that involves transformations in the modern western political organization. Indeed, every human being is acknowledged as a rational being, so everyone shall get a share in the political power. Moreover, being rational involves free-will: modernity—as replacing man at the centre of the process of knowledge—has thus founded a sort of equivalence, a common foundation, for the values of equality and liberty. It is in that sense that we argue the advent of modernity generated the synthesis or even the reconciliation of the values of equality and liberty.

Now, bringing rationality as the essential element that characterizes human nature involves one simple statement, that is men are able to make decisions on their own, and thus founds the idea of free-will. It is of course Kant’s analysis that provides the most striking account of this idea and that leads to the assertion of human autonomy—the capacity of the will to determine its own principles, which is one of the account that can be made of human liberty. Thus, these principles, called maxims, emanate from subjectivity, placing it once again at the heart of both descriptive and normative processes. The idea then, is to say that acknowledging reason and subjectivity as the central characteristic of human nature and thus acknowledging that this involves that people are able to choose for themselves, but also for all in a way, as the goal is for their maxims to become universal (and become objective laws of morality)—then all people must be entitled to participate in the ruling process of social life, that means the acknowledgment of their *equal* capacity to self-determine themselves. Thus, the concept of autonomy brings the values of equality and liberty together: “For Kant, we are all equally rational and equally moral agents, given that our nature as rational and moral agents depends

not on our natural capacities but on the free will that we each possess as a noumenal being” (Carter, 2011, p. 544). Dyke (1969) also later pointed out that “in the course of the history of Liberalism, the standard of justice became secularized. People no longer talked about God’s law, but about natural rights and the common good” (Dyke, 1969, p. 22) and this involves according to him that “the principle of autonomy” basically implies that “each individual is competent to have a hand in making law” (*Ibid.*), that is, the modern conception of freedom leads to acknowledging a principle of equality.

We find the same line of thought in Feierstein (2014) when retracing the change from Middle-Ages to Modern times:

“Feudalism assigned people to different social classes according to their birth and gave each different privileges and obligations. *The modern concept of autonomy was necessary for building social relationships based on equality.* The absolute right of the feudal monarch was replaced by the need for consensus based on a responsible use of reason. Within the modern liberal paradigm, Jean Jacques Rousseau is the most extreme exponent of the bourgeois liberal version of equality and the ‘social contract’ as a source of legitimate authority, while Immanuel Kant emphasizes the role of reason in human action and human autonomy as a goal to be achieved”. (Feierstein, 2014, p. 57, my emphasis)

This expresses well the intertwined nature of equality and freedom that modernity seems to have brought, especially through the expansion of the concept of autonomy, as Feierstein insists on, asserting that equality and freedom constitute, together, the principles of autonomy (*Ibid.*, p. 59).

However, the way the concept of autonomy has evolved is not always absolutely faithful to Kant’s moral philosophy, but its great influence has shaped many later thoughts and it has notably been decisive in the construction of individualism. Indeed, asserting autonomy as the central value involves acknowledging individual free-will and with it the right for people to follow their own decisions and plans of life, to settle their own particular ends. Human reason as the basis of any process of knowledge or organization leads to allow the emancipation of subjectivity, but especially as individual, and finally, “personal autonomy”, as it has evolved, settled the issue of well-being, largely at stake in contemporary social justice issues:

“In Western industrial societies a particular conception of individual well-being has acquired considerable popularity. It is the ideal of personal autonomy. It transcends the conceptual point that personal well-being is partly determined by success in willingly endorsed pursuits and holds the free choice of goals and relations as an essential ingredient of individual well-being. The ruling idea behind the ideal of personal autonomy is the vision of people controlling, to some degree, their own destiny, fashioning it through successive decisions throughout their lives.” (Raz, 1986 [2003], p. 370)

Here, we see how the concept of autonomy became the basis for thinking the right to individual freedom. In the end, Modernity being the reign of reason and subjectivity brought a conception of the being as both free and equal. It is because people are rational beings that they deserve equal treatment in a general perspective, so that the epistemic position and ontological conception of the being of modern times seem to have founded the egalitarian political paradigm. Other theorists suggest “variants” of the reason-based justification of equality, such as Williams (1973) and Carter (2011) who promote consciousness as the basis of equality: the idea is of “grounding equality from the human point of view” (Williams, 1973, p. 17), basing it on self-awareness of “one’s own place in the world” (Carter, 2011, p. 547-548). However, for the purpose of our argumentation, reason is rather relevant as it provides a basis for showing the intrinsic link of the values of liberty and equality²².

In his book on Hegel and the modern society (1979) Charles Taylor also mentioned this reason-based justification of equality and its deep relation to freedom, as settled by Kant: on the one hand he asserts that rationality demands that man be treated as a rational subject or, in Kant’s terms, as an end and not as a means, adding that in political terms, this means that the modern State must acknowledge the rights of the autonomous individual (Taylor, 1979 [1998], p. 82). He adds that, on the other hand, rationality, even in its Kantian acceptance, demands that the State be subjected to the law, and not to the arbitrary, knowing that the law applies to all equally (*Ibid.*). So that we clearly see, again, how Kant and the principle of

²² Although some authors have criticized the “Kantian solution”, that is the principle of equality is justified by the rational and moral nature of the being (“respect is owed to each person simply in virtue of her being a rational moral agent”) because it “relies on a conception of the self that we have good reason either to reject or, in any case, to avoid assuming. There is no empirically based reason to suppose that all people are equally capable of setting ends rationally or are equally capable of acting for the sake of duty” (Carter, 2011, p. 542). Carter also mentions Darwall (1977) and Hill Jr (2000) concerning this question.

rationality (in the Kantian philosophical sense) settled freedom and equality as fundamental values, which became norms for considering issues of social organization, and also settled them as intertwined.

Modern philosophy has thus made human reason a central concept and this brought the reason-based justification of the principle of equality that is; as all men are acknowledged as rational beings, they all deserve an equal share in society and in its ruling. Plus, acknowledging their rational nature involves the recognition of free-will, bringing the concept of autonomy. So that it appears that the modern conception of the being as autonomous gives its meaning to the principle of equality. So basically, mainly basing on Kant, one can say that modern philosophy brought the idea that men have an equal capacity to self-determination, that is an equal freedom.

Now, there is also one striking attempt of the contradiction between freedom and equality finding its way of reconciliation in Hegel's account of the ethical life, and more specifically through the emphasis on the civil society in his social system that expresses this tension which seems to characterize social justice issues.

4.2. The Hegelian Modern Society

Hegel's thought is also characteristic of Modernity regarding its account of the individual. His conception of the modern State that is conditioned by the existence of civil society in the ethical life (*Sittlichkeit*) (*Elements of the Philosophy of Right*, 1820) involves the individualistic dimension of the being that brings together the values of equality and liberty. In the civil society, individual free-will is acknowledged and not only in the Kantian and moral sense of autonomy. As free, the individual has the right to follow his own interest, to fulfil his personal desires (even though civil society is only a step on the way to the spirit's achievement, so that this individual right to particularism does not define actual liberty according to Hegel). And this entitlement happens in the sphere of right, in the moment of the for-itself, so that people are considered as persons, namely as equal subjects of right.

Modernity brought a new dimension of freedom—essentially based on individual freedom—which puts forward notions such as autonomy and with it the right for people to develop their own conception of the good and to choose the principles of life they have reason to value. The individual has become a key notion, even paradigmatic, for modernity and this has had an impact on the way to conceive political theory and the place of institutions regarding stakes of social justice. And Hegel started pointing the specificity of modern societies (comparing to Antiquity):

“The modern state contains one specific institution which separates it decisively from earlier and less developed social orders: Hegel’s name for it is ‘civil society’. (...) Civil society is the realm in which individuals exist as persons and subjects, as owners and disposers of private property, and as choosers of their own life-activity in the light of their contingent and subjective needs and interests. In civil society, people’s ends are in the first instance purely private, particular and contingent, not communal ends shared with others through feelings (as in the family) or through reason (as in the state).” (Wood, *in* Hegel, 1820 [2003a], p. xviii)²³

As Hegel shows, modern society asserts the right for people to follow their own interest although the Ancient State was based exclusively on the principle of common good and will. The public life was prevalent, and freedom was to be found only in this sphere: freedom was lacking the individual dimension contained in the modern conception of autonomy. But Hegel asserts the need for subjectivity to emancipate, in order to realize individuals’ liberty. In the civil society the legal structure of abstract right allows men to follow their own particular interest, leading them to find later the moral conditions to have their own conception of the good (Hegel, 1820 [2003], §182-526).

Civil society is thus a necessary moment in the political structure designed by Hegel, which asserts the right to follow one’s particular interest in order to complete people’s freedom (as they can then act according to their own values and conception of the good, through the realization of their own particular will). This is why he criticizes the model of the Ancient State as missing the step of civil society. Now, this absence is due, as Ege and Walraevens (2011) pointed out, to the Ancients’ fear of subjectivity: the civil society, as the moment of the particular

²³ See also Remarks of § 185 of *The Elements of the Philosophy of Right* (Hegel, 1820 [2003b], p. 222-223).

interest, is properly related to the “reign of the emancipation of subjectivity that is the realization of individual happiness” (Ege and Walraevens, 2011, p. 236). Hegel explains that the Ancient State rejected the idea according to which effective freedom consists in the principle of a singular individual allowed to be his own particular end. The Greek State thus rejects the “particularity associated to needs”: it “has not yet become part of [the realm of] freedom but is confined to a class of slaves” (*Ibid.*, p. 379). Ege (2008) shows this rejection of particularity is related to the fear that it would lead to the destruction of the State, as the consequence of an “indifference with regard to the principle of the universal”, as in particularity would swallow up universality, following which the State only welcomes within itself “the individual dispossessed from any particular determination” (Ege, 2008, p. 36).

Civil society is, in Hegel’s system, the institution that recognizes and enables the expression of subjectivity, that acknowledges otherness, so that people are treated equally in the sense that they have a symmetrical power, and their interests matter equally, although they can diverge, and they can use their power differently, according to their own free-will. In his theory of recognition, Honneth also points out the stakes of modernity, mainly asserting that modern individualism instituted the right to particularization [*Besonderung*] (Honneth, 1992 [2000], p. 44), and that individual—or “negative”—liberty is a necessary step towards actual freedom, is a “demand” (*Ibid.*, p. 54). He relies on Hegel to show that the “freedom of individuals is finally only implemented in that space where they can participate in institutions whose normative practices assure a relationship of mutual recognition” (Honneth, 2011 [2015], p. 181). Indeed, one central idea of Hegel was that people’s actions cannot be truly effective without the mediation of institutions—as in the moment of morality for instance (Hegel, 1820, § 107-118). This way, “Hegel can conclude that individuals only really experience and realize freedom if they participate in social institutions that are formed by mutual recognition relationships” (*Ibid.*, p. 185)—that is, a structure of equality.

The originality and strength of Hegel’s thought then, is to have separated the civil society from the State, associating to each a different state of being: in the civil society, the individual is free and equal but negatively free (his freedom is essentially characterized by free-will in the sense of indeterminacy, that involves

the risk of the “bad infinity”—and negative in the sense of an exclusively individual and subjective freedom), and formally equal (the “person” is equal regarding the law only), whereas, in the State, the individual acquires actual freedom (as the subjective and particular principles of its actions become objective and thus efficient) and he is being equal in a superior sense, namely of identity (as a citizen he takes part in universality, so that in this final moment of the ethical life—of reconciliation—the contradiction between the universal and the particular is *supposed* to be solved). Hegel puts it this way:

The principle of modern States has prodigious strength and depth because it allows the principle of subjectivity to progress to its culmination in the extreme of self-subsistent personal particularity, and yet at the same time brings it back to the substantive unity and so maintains this unity in the principle of subjectivity itself” (Hegel, 1820, § 260)

Eventually, the way he distinguishes civil society and the State as two separate moments provides a synthesis of the principles of the particular and the universal: basically, in civil society, both principles are in contradiction as we find a variety of particular interests, all acting in sight of themselves, but the State comes to resolve the contradiction and brings actual freedom through equality that appears under the concept of citizenship, that is a form of universal recognition, of equal consideration, thus giving its relevance to general, or prescriptive, equality. Hegel’s philosophy shall then let us assert the possible reconciliation of equality and liberty through the modern conception of the being, regarding political and social concerns.

SECTION 5. The Contemporary Synthesis

Modernity seems to have had a great influence on the way to conceive political and social issues as it contributed to reshape some of their fundamental values. Indeed, the secularisation of the process of knowledge, and with it of political authority has allowed the expansion of new foundations for the concept of equality: on a normative point of view, people are no longer equal because all human beings are creatures of God that He loves equally, but because they are rational and moral beings. And rationality brought the inherence of liberty, based on the conception of free-will. Now this reasoning apparently persisted over time, until our contemporary theories of social justice, that, for the quasi totality, settle a form of freedom as their object, while always assuming some principle of equality (Sen, 2009, p. 291), because, mainly, of the acknowledgment of people's rational nature. We then have specific theories that have recently emerged and that put a conjoint idea of liberty and equality at the heart of their concerns: "relational equality", "social liberty" or "democratic equality" are as many concepts that assume a relation of almost synonymy between equality and freedom. Finally, the ideal of democracy itself, seems to constitute the political disposition that precisely actualizes this synthesis.

5.1. Relational Equality

In recent history, social movements for recognition and theorists of recognition have made emerged the idea that equality is the necessary condition for liberty, leading some to assume equality is actually contained in the concept of liberty, or even that they designate the same thing²⁴.

In her article "What is Point of Equality?", that essentially aims at calling the branch of luck egalitarianism into question, Elizabeth Anderson (1999) develops a conception of equality as "democratic" for the treatment of social justice issues, claiming that the "positive aim" of egalitarianism shall be to "create a community

²⁴ As we shall see later, especially in Chapter 3, it is notably the case of Axel Honneth (1992; 2010; 2011; 2012)

in which people stand in relations of equality to others” (Anderson, 1999, p. 288-289), where the social, relational dimension of equality is thus straightaway put on the table. Indeed, she adds that “democratic equality is what [she] shall call a relational theory of equality: it views equality as a social relationship” (*Ibid.*, p. 312).

Now, basically, democratic equality “integrates principles of distribution with the expressive demands of equal respect” in order to guarantee “all-law abiding citizens effective access to the social conditions for their freedom at all times” (*Ibid.*, p. 289), so that equality is mobilized as the condition for liberty, as it “aims to abolish socially created oppression” (*Ibid.*, p. 313)²⁵. Indeed, her article starts with the following question: “What has happened to the concerns of the politically oppressed? What about inequality of race, gender, class, and caste? Where are the victims of nationalist genocide, slavery, and ethnic subordination?” (*Ibid.*, p. 288): the issues she targets and tends to solve are definitely related to inequalities of status, to asymmetry of political and social empowerment, that is to say to issues of recognition; the principle of prescriptive equality, of equal treatment, being not perfectly performed²⁶. Now, these inequalities in terms of social relationships directly imply a lack, a cut-off in the formal and actual freedom of the concerned persons or groups. So her argumentation is based on the assertion of the equal moral worth of people as the condition of their freedom—that is, of general equality.

Indeed, she also shows that a situation of equality is basically a situation of non-domination, that is one fundamental sense of liberty. For instance, she explains how equal people are people who are not constraint by others, who are not marginalized by others, so that they are free to take part in political and institutional life, they are also people who are not dominated by others, so that they are free to follow their own will, they are people who are not exploited by others

²⁵ Indeed, another important point of Anderson’s paper (1999) is the demonstration of the irrelevance of the luck egalitarian argumentation: she essentially targets the fact it conceives of equality as a pattern of distribution and omits its prescriptive dimension of equal treatment. She thus shows that its mistake is to aim at correcting the effects of luck, so at neutralizing the results of what is beyond human control, whereas justice should focus according to her on putting an end to socially created inequalities: “Democratic equality applies judgements of justice to human arrangements, not to the natural order” (Anderson, 1999, p. 315).

²⁶ We shall clarify in Chapter 3 the conditions to perform this formal dimension of equality, but also go further while mentioning its limits.

and they are not submitted to cultural imperialism (*Ibid.*, p. 315). All of these situations effectively describe a state of being as free in some (minimal or partial) sense, that requires acknowledged general equality between persons, that is a relational conception of equality, that eventually aims at ensuring people's autonomy.

Anderson is not the only philosopher who developed such a view though. Scheffler (2003) who directly follows her position regarding her critic of luck egalitarianism, agreed to say that

“Human relations must be conducted on the basis of an assumption that everyone's life is equally important, and that all members of a society have equal standing. (...) Equality so understood is opposed not to luck but to oppression, to heritable hierarchies of social status, to ideas of caste, to class privilege and the rigid stratification of classes, and to undemocratic distribution of power” (Scheffler, 2003, p. 21).

Here again, we find the social dimension of equality that intrinsically aims at instituting a state of freedom in social relationships, so basing on the collective dimension that is at stake regarding justice issues. Other theorists have raised the idea of equality and liberty being almost synonymous: Kolm (2006) asserts “social liberty” as the “basic rule of modern societies”, that is not being constrained by others and this liberty is equally, even “tautologically” desired by everyone (Kolm, 2006, p. 61). He adds that

“the equality of liberty and its extensions, rather than the sum of utilities and its descent ‘social welfare’, constitutes the rational individualistic way to define what is just or right in a society. This view has indeed characterized the modern world for the last two centuries” (Kolm, 1996a, p. 26).

Moreover, he considers the ideal of equality as being the “consequence of rationality” (Kolm, 2007, p. 44), so that this idea of equal liberty is also founded on the reason-based argument mentioned in the previous section.

We shall also mention Axel Honneth who guided us through the idea of interdependency between liberty and equality:

“Individual freedom can only be understood as a universal value in the modern world. Thus from the very beginning the idea is that everyone deserves

freedom and anyone can claim *Das Recht der Freiheit* [the Right of Freedom]. It is not an exclusive principle, as it was the case in antiquity; rather, the modern concept of individual freedom is from the beginning radically general and universal. This means, with respect to equality, something different to each sphere. On the other hand, it means, that in all, sufficiently developed, spheres, all individuals should be equally free. In my mind this means that equality is not an independent value, but rather the form of implementation of the universal idea of freedom, that is, it changes from a primary value to the form under which individual freedom is realised, because it is understood as a universal value.” (Honneth, *in* Lysaker and Jakobsen (eds.), 2015, p. 267).

Eventually, with Kolm and Honneth, there is the strong claim that this interdependency is characteristic of Modernity, and that equality has something to deal with the universal as a principle applying to individual freedom, an idea on which we shall get back through Sen and Hegel in the two next chapters. But at this stage, we tend to claim that somehow, freedom fundamentally consists in a situation of equality, so that the content, or even the object of equality is liberty. And this conception of relational equality is to be found mainly in theories of democracy.

5.2. Democracy Performing the Synthesis

Modern western societies and contemporary social justice theories seem to have adopted the reason-based justification and thus the principle of prescriptive equality. They indeed strongly value freedom as an end, and most political doctrines establish democracy, or democratic dispositions of the social life as the relevant structure to perform a state of fairness and freedom.

Of course it is the case of Elizabeth Anderson with her concept of democratic equality that aims at abolishing structures of social hierarchy to promote relational equality and ensure freedom. Indeed, she claims democratic equality tends to guarantee the social conditions of liberty, so that everyone must, in the first stance, be provided with the power of participation:

“Egalitarian political movements (...) assert the equal moral worth of persons. This assertion does not mean that all have equal virtue or talent. Negatively, the claim repudiates distinctions of moral worth based on birth or social identity—

on family membership, inherited social status, race, ethnicity, gender, or genes. There are no natural slaves, plebeians, or aristocrats. Positively, the claim asserts that all competent adults are equally moral agents: everyone equally has the power to develop and exercise moral responsibility, to cooperate with others according to principles of justice, to shape and fulfil a conception of their good". (Anderson, 1999, p. 312)

We also find, in this definition of democratic equality, the rationality and morality based justification of equality, that denotes a Kantian influence. Further, Anderson adheres to Sen's conception of justice in terms of capabilities²⁷ (*Ibid.*, p. 316), as it draws according to her, a more relevant and exhaustive definition of liberty. She claims for instance that "democratic equality guarantees not actual levels of functioning, but effective access to those levels", and notably "effective access to levels of functioning sufficient to stand as an equal in society" (*Ibid.*, p. 318). The aim then is to determine which capabilities are necessary in order to "function" as an equal citizen: Anderson establishes two fundamental aspects, namely formal democratic rights such as voting, participating in the public debate, and the positive capability to participate in all spheres of society as an equal—"Citizenship involves functioning not only as a political agent—voting, engaging in political speech, petitioning government, and so forth—but participating as an equal in civil society" (*Ibid.*, p. 316). And eventually, democratic equality and the related capabilities should guarantee an effective access to the social conditions for liberty to all citizens.

Democracy puts forward equality as a conditional principle, even very formally sometimes with only the right to vote, but the fundamental idea is to empower equally each citizen with the possibility to take part in the social and political life, notably as Sen (1999) argues political liberty (that includes many dispositions for equality in terms of citizenship) is the first condition for human freedom and his conception of democracy depends on the actual capacity of people to express their point of view and interests and get heard in the public debate (this point will be further developed in Chapter 2). It finally appears that contemporary conceptions

²⁷ Basically, capabilities reflect "the actual freedom that people respectively enjoy in being able to live the kind of lives they have reason to value" (Sen, 1990, p. 460), taking into account their resources, their capacity (and freedom) to convert those resources into well-being (or certain level of functioning) and the actual level of well-being, or functioning, they actually achieve.

of democracy, generally based on the argument of the equal moral worth of people (the Kantian reason-based justification), do operate this synthesis between equality and liberty, making the former the condition of the latter.

In the end, it is more the idea of interdependency of both values that prevail, so much that Tocqueville, already almost two centuries ago, in his account of modern democracy, noted that

“It is possible to imagine an extreme point at which freedom and equality would meet and blend. Let us suppose that all the people take part in the government, and that each one of them has an equal right to take part in it. As no one is different from his fellows, none can exercise a tyrannical power; men will be perfectly free because they will all be entirely equal; and they will all be perfectly equal because they will all be entirely free. To this ideal state democratic nations tend” (Tocqueville, 1870, p. 177).

This perspective of democracy reflects the deep link of equality and liberty as interdependent values. As Anderson and Kolm notably mentioned it, there are cases where both concepts overlap and refer to the same situation, as for instance non domination involves equality in the symmetry of a social interaction and liberty in the absence of constraint from an exterior will. However, this conception of freedom in the only terms of an absence of coercion or domination does not appear sufficient to us. Indeed, these conditions constitute the basic and necessary ones for realizing freedom, but as we started seeing with Hegel and his concept of civil society, there needs to be some room for subjectivity, for difference, so that prescriptive equality is not enough as we shall further investigate in Chapter 3.

SECTION 6. Concluding Remarks

Modernity have settled a conception of the being that apparently largely influenced the way social organization is to be founded. Relocating the individual at the heart of processes of knowledge and decision, asserting his autonomy and free-will, involves moral considerations that implemented equality and liberty as interdependent values, despite the way they have been settled as antithetical. Eventually, it is a kind of synthesis of both values that modernity offered, and such an understanding provides arguments for defending the relevance of equality regarding social justice concerns.

Nevertheless, asserting equality as the condition for freedom logically leads to consider it as a means, involving an instrumental type of egalitarianism, that calls into question its fundamental normative character as morally required for social justice concerns. This brings us to a limit as this can come in contradiction with the defence of the relevance of prescriptive equality, and of its transcendental dimension—which will be the object of the next chapter.

Meanwhile, the antithetical relation of freedom and equality that has been exposed in this chapter, reveals something central regarding social justice issues, and for the purpose of our thesis: whether the relation of both values is qualified as antithetical, interdependent or instrumental, it appears that it is *fundamentally characterized by a tension*.

Indeed, Hegel's account of the civil society and his philosophy of the spirit in general shows how the issue of freedom is determined and framed by the contradiction of the principles of the universal and the particular. And although the moment of the State is supposed to resolve this problem and opens this dead-end, it still does not constitute a fully satisfying moment, that would be the stage of the completion of the spirit (which is to be found in the philosophy of the absolute spirit, situated above Hegel's political and social philosophy that refers to the objective spirit "only").

Thus, there appears that this tension, between the universal and the particular, that we shall further examine in Chapter 3, can be related to the one that exists between the values of freedom and equality. Indeed, more recently, Thomas Nagel stated that "in the absence of such a utopian solution [the abolition of inequalities]; the

familiar task of balancing liberty against equality will remain with us” (Nagel, 1979, p. 105)—that is, as long as inequalities that are considered as unfair exist we shall constantly consider both values, that is again, social justice is deeply characterized by this tension.

However, before getting into the heart of the problematic of that tension, we shall first go deeper into this concept we introduce and that is our starting point, namely general equality. The next chapter will be the occasion to better understand how we conceive of it, and more precisely how it is Sen’s conception of justice that suggested the form it takes in this thesis, through re-analysing the role it plays in his own theory.

CHAPTER 2

Equality and Impartiality: From Particular to General Equality in A. Sen's

This chapter focuses on Amartya Sen's conception of equality regarding contemporary theories of justice. Starting from a question he considers crucial, "Equality of what?", which involves a conception of equality in terms of "space", I move to the importance of the related issue that is, "Why equality?", and refers to the general dimension of equality. This chapter is thus the occasion to settle and further explore the distinction brought on the table in Chapter 1. Now, the determination and importance of general equality are implicit in Sen's work, but this chapter aims at clarifying its sense and crucial nature regarding social justice theories. Furthermore, shedding light on this second acceptance of equality as developed by Sen leads to our second argument that justifies the egalitarian paradigm of contemporary theories of justice: the impartiality-based justification. Now, the argument of impartiality as the necessary condition of justice involves some considerations regarding Sen's own idea of justice and the debate it launched concerning the transcendental and comparative approaches.²⁸ This chapter thus also shows how the impartiality-based justification of equality reveals the relevance of the transcendental approach for Sen's own idea of justice, although he rejects it in favour of the comparative one, and for social justice issues in general.

²⁸

See footnote 9.

SECTION 1. Introduction

The issue of equality has been established as a fundamental one in the field of social justice and more broadly for political theory. It is indeed widely debated, and the discussion mainly concerns *what* content equality should adopt: equality of resources, of chances, of capabilities, etc., are some of the possible answers to the question “Equality of what?”, raised by Amartya Sen firstly in his eponymous Tanner Lecture at Stanford in 1979, that stands in front of a second concern, namely “Why equality?”. This introduction will be the occasion to provide an outline of what those two questions involve regarding social justice issues and to go through the discussions they have raised in the literature.

1.1. An Outline

The “equality of what” question puts forward the concept of “space”, by precisely seeking, as an answer, the right “space” of equality, that is to say the specific content of equality which is to be promoted by a theory of justice to realize fairness in a society. The “space” of equality also refers to the criterion which is to be adopted in order to compare and evaluate people’s social situations, on which we rely to judge a person’s advantages and disadvantages. Among others, Fleurbaey (1995) also pointed out the importance of the issue “Equality of What?”, indicating that “the bulk of the debate (...) deals with what variables ought to be submitted for selection and how this selection ought to be carried out” (Fleurbaey, 1995, p. 25).

And as chapter 1 started raising while observing the distinction that is to be made between particular and general equality, the notion of “space” is crucial to the purpose of our thesis: it denotes a specific characteristic of contemporary social justice theories, as Sen suggests, thus putting in perspective the two-dimensional aspect of equality. Indeed, all theories of justice take equality into consideration but in a particular way, seeking for one specific space in which it should be realized, allowing at the same time inequalities to come out in some other spaces. As Sen puts it:

“Every normative theory of social justice that have received support and advocacy in recent times seems to demand equality of *something*—something that is regarded as particularly important in that theory. The theories can be entirely diverse (focusing on, say, equal liberty or equal income or equal treatment of everyone’s rights or utilities), and they may be in combat with each other, but they still have the common characteristic of wanting equality of something (some feature of significance in the respective approach)”. (Sen, 2009, p. 291)

This excerpt from *The Idea of Justice* (2009) reveals the dual aspect of equality in normative theories as Sen exposes it: there are several possibilities in terms of “space” but all theories are based on a general and shared will of equality, at the abstract level. This brings us to another question raised by Sen in his 1979 lecture, namely “Why equality?”—an issue with a more fundamental perspective, seeking to establish the reason for the necessity of equality for any ethical judgement, as related to the fundamental demand for impartiality as the condition of justice, which has already been established as such by Rawls in *A Theory of Justice* (1971)²⁹. This implies, according to Sen, that all contemporary theories of justice include an egalitarian aspect—which makes equality a constitutional principle—however, they do not necessarily share the same vision concerning the particular form it should take: the content of equality varies from one theory to another so that we end up with a plurality of “spaces” of equality, according to each conception of justice. This “Equality of what – Why equality” distinction involves that each theory targets equality—and this assumption relies on the question “Why equality?”—but all theories do not promote the same particular content, the same “space” or “something”—and this refers to “Equality of what?”.

Now, the idea that equality should be regarded as a “space” is notably present in *Inequality Reexamined* (1992) and in *The Idea of justice* (2009). And although Sen suggests in the latter work that equality can also be considered as a general principle that any normative theory should meet, he seems to consider the issue “Why equality?” as being of little importance regarding distributive issues and claims that only “Equality of what?” is really worth treating:

²⁹ Rawls indeed suggests impartiality as the necessary condition of justice when asserting that principles chosen under the veil of ignorance by rational agents are principles of justice that allow achieving a fair state of society, in that impartiality permits a convergent opinion on the economic and social rules of a community, that will thus be directed towards the interest of all.

“Two central issues for ethical analysis of equality are: (1) why equality? (2) Equality of what? The two questions are distinct but thoroughly interdependent. We cannot begin to defend or criticize equality without knowing what on earth we are talking about, *i.e.* equality of what features (*e.g.* incomes, wealth, opportunities, achievements, freedoms, rights)? We cannot possibly answer the first question without addressing the second. That seems obvious enough.

But if we *do* answer question (2), do we still *need* to address question (1)? If we have successfully argued in favour of equality of *x* (whatever that *x* is—some outcome, some right, some freedom, some respect, or some something else), then we have already argued for equality in that form, with *x* as the standard of comparison. (...) There is, in this view, no ‘further’, no ‘deeper’ question to be answered about why—or why not—‘equality’. Question (1), in this analysis, looks very much like the poor man’s question (2)”. (Sen, 1992, p. 12)

Sen claims here that economists should not be concerned with answering the question “Why equality?”, and thus clearly evacuates the issue in *Inequality Reexamined* (1992)—although this work provides a good understanding of the distinction between “equality of what?” and “why equality?”. However, and this is what the present chapter aims at showing, it appears that the issue is actually of first importance for contemporary social justice theories according to Sen. Indeed, in the *Idea of Justice* (2009), he gets back to the issue and suggests that impartiality, as the expression of a general principle of equality, is to be considered as the fundamental requirement of justice: he thus implicitly acknowledges the importance of some kind of fundamental and general idea of equality, not only in terms of space—that is to say of the relevance of “why equality”. Indeed, he suggests that a general type of equality is necessary to guarantee impartiality, and this leads him to the issue of human rights in a global context, considered through the spectrum of the “impartial spectator” he took from Adam Smith (1759). He relies on it in order to postulate the universal reach of fundamental human rights, assuming they should be equally attributed, regardless of any consideration concerning citizenship or nationality (Sen, 2009, p. 144). Furthermore, he develops the concept of “open impartiality”, as still related to the imperative of general equality: it allows a fair procedure of public debate in the sense that it recognizes the equal capacities of judgement of any agent.

Here I claim that Sen's argumentation asserting the necessity of impartiality finally leads to reconsider the stakes of the methodological debate concerning the transcendental and the comparative approaches. The first—that Sen rejects—is based on the contractarian tradition and seeks to identify the principles and institutions of an ideal society (*Ibid.*, p. 5-6), while the second—that Sen promotes—is “concerned with social realizations (resulting from actual institutions, actual behaviour and other influences)” (*Ibid.*, p. 7), aiming at the assessment of real social situations. This chapter thus aims, in parallel of the process of justification of the egalitarian norm, at showing the relevance of a transcendental perspective for Sen's own idea of justice, from the perspective of his treatment of equality. The central idea is that Sen maintains “why equality?” as a secondary issue for social justice and this leads him to neglect the transcendental approach. However, we find that his assertion of the necessity of impartiality reveals another way to consider his conception of justice which would include a transcendental aspect. The objective of this chapter is then to provide evidence of the presence of both a general conception of equality and of transcendental aspects in Sen's conception of justice, by clarifying his implicit mention of the former and refuting his explicit reject of the latter.

This chapter will thus be the occasion to deepen the distinction between “equality of what” and “why equality”, through the analysis of both questions and Sen's position regarding it, leading to separate a *particular* form of equality—the space—from a *general* one—related to the demand for impartiality. Although Sen assumes that seeking an answer to “Why equality?” is unnecessary, if not useless, it appears that this fundamental issue is actually one of his preoccupations. Second, the analysis refers to his conception of equality as the expression of impartiality, which can actually be taken as an answer to the question “Why equality?” in itself. Impartiality is of first importance for Sen, as he argues that without this requirement being met, a normative theory cannot be viable (Sen, 2009, p. 353). Finally, the analysis of the distinction between “equality of what” and “why equality” integrates some aspects of the discussion concerning the transcendental and the comparative approaches. Indeed, the presence of a general, even absolute form of equality (“why equality”), which can be seen as an ideal, could denote the relevance of a transcendental dimension in Sen's own idea of justice, although he explicitly rejects its interest, saying that this perspective is “neither necessary nor sufficient” (*Ibid.*, p. 41).

1.2. Some inputs

Regarding the existing literature, most of the studies which have been led on Sen's works focus on the concept of capability, or on the discussion concerning the transcendental and the comparative approaches, which focuses mainly on Sen's reject of the transcendental tradition and its relation to John Rawls, but also to Adam Smith through the analysis of Sen's use of the concept of the impartial spectator—for instance Gilardone (2015) on Rawls, and Bréban *et al.* (2015) on Smith. Some works have shown the relevance of the transcendental perspective for Sen's own idea of justice relying on diverse arguments: Ege *et al.* (2016) claim that “a comparative approach cannot exist by itself without a transcendental dimension”, especially as “a transcendental dimension is the *condition of possibility* of any comparative theory” (Ege *et al.*, 2016, p. 523). Kandil (2010) shows the reciprocal complementarity of both approaches, insisting on the necessity of a “transcendental anchoring” for the comparative approach, favouring a “synthetic perspective” (Kandil, 2010, p. 213). Gamel (2010) and Robeyns (2012) also argue in this sense, and so do I in this chapter, by advancing a new argument focusing on Sen's specific conception of impartiality as an answer to “Why equality?”, revealing its general and *a priori* nature, but also its universal character as related to the issue of human rights. However, Sen's account of the wide concept of equality has been almost only discussed as linked to the concept of capability, so, as related to the question “Equality of what?”. For instance, Fleurbaey (1995) provides a consistent account of this issue, and Hausman and McPherson (1996) explore some of its traditional answers (notably equality of resources, welfare and capabilities), but also show how the economic analysis relies on moral assumptions, and dedicate one section to the question “Why equalize?” (Hausman and McPherson, 1996, p. 177). This chapter thus tends to deepen the understanding and highlight the fundamental nature of “Why equality?”, while contributing to a literature which has raised the idea that equality, in Sen's work specifically, can be seen in a general perspective, as a universal moral prerequisite. Kane (1996) for instance connects the concepts of non-discrimination and equality of treatment, as being both inherent to justice: “the connection between justice and equality is, on this view, a logically necessary one: analyse the concept of justice and you will discover within it the concept of

equality” (Kane, 1996, p. 375). He highlights Sen’s claim about the necessity of equality as a fundamental principle of justice: “a principle of presumptive equality forms the shared background of all the major theories of social justice and (...) this principle is implicit in the necessary impartiality of ethical reasoning” (p. 388). Wall (2007) raises the *basic equality* claim, whose principle is “each has a life that is equally morally important” (Wall, 2007, p. 423), as providing support for democracy. Knight (2009) asserts, just as Sen does, that what essentially matters is to answer the question “equality of what?” (Knight, 2009, p. 345), but still considers that Sen’s conception of equality in terms of space “*starts* from an assumption of the moral equality of human beings” (*Ibid.*, p. 403). However, these studies do not specifically concern the primordial aspect of “why equality” regarding contemporary theories of justice, and the role it has for Sen’s theory. I propose to deepen these positions in order to show what such a conception of equality, as a general moral principle, implies, notably regarding the discussion on the transcendental and comparative approaches.

The chapter is organized as follows: first comes the analysis of the distinction between “Equality of what?” and “Why equality?” suggested by Sen. Second, I develop a specific study of this “why equality” in order to show Sen’s support for a general conception of equality as related to the normative requirement of impartiality for social justice theories. Finally, I come to the importance of impartiality in Sen’s thought and its methodological implications regarding his position regarding the transcendental and comparative approaches to demonstrate the relevance of the former one.

SECTION 2. From “Equality of What?” to “Why Equality?”: Two Forms of Equality

The study of the distinction between the two questions “equality of what?” and “why equality?” helps in understanding the role and place of equality in the field of social justice and contemporary normative theories. This section shows that the distinction leads to consider equality according to two different forms, a *particular* one which refers to the concept of “space”, defining the content, the object of equality, and a *general* one which invites to consider the reasons for the necessity of some form of equality in itself and thus provides a more fundamental conception of it. However, although both issues are related, Sen suggests that only the first one is actually relevant for ethical and distributive issues. The aim of the section consists in clarifying his position through the analysis of both questions.

2.1. “Equality of what?”: A Central Concern for Social Justice in Sen’s

The famous example that Sen uses to illustrate the plurality of competing criteria of justice and thus call into question the feasibility of John Rawls’ approach supposed to result in a “unique transcendental agreement” (Sen, 2009, p. 10), the example of three children and a flute—poses the issue of the determination of the content of equality, related to the “equality of what?” question. In this example, three children, Anne, Bob and Clara, are quarrelling about obtaining a flute and each of them stands with a coherent argument: “Anne claims the flute on the ground that she is the only one of the three who knows how to play it”, “Bob (...) defends his case for having the flute by pointing out that he is the only one among the three who is so poor that he has no toys of his own” and “Carla (...) points out that she has been working diligently for many months to make the flute with her own labour” (*Ibid.*, p. 13). Sen thus puts in perspective three arguments, that respectively relate to utilitarianism, economic egalitarianism and libertarianism, but what Sen shows is that these three different doctrines, although they would obviously support one argument over the others in the first stance, would also consider and agree on some aspects of the others; for instance, the utilitarians who

would support Anne's argument, would also take into consideration the right to property on one's own production regarding work incentive requirements necessary for the creation of utility (*Ibid.*, p. 13-14). So this example is advanced in order to set forth that finding an absolutely fair and impartial social arrangement is probably impossible, suggesting the invalidity of the transcendental approach regarding social justice concerns.

That is why, according to him, the question "Equality of what?" is the central question social justice theorists must think on, and this idea already appeared in his 1979 speech at Stanford University, where he also deployed his critic towards Rawls' theory of justice and equality in terms of primary goods as it appeared at that time. Sen's main argument against equality in terms of primary goods lies in the ideas of human diversity and conversion difficulties³⁰, that is the idea that people, even though they are provided with equal primary resources, do not all have the same capacity to turn those resources into actual levels of well-being, so that Rawls' theory does not account enough for people actual opportunities to realise what they initially tend to. Human diversity also suggests that people do not all have the same needs, so that equal primary resources will not provide them with the possibility to achieve equal situations. So for Sen, "Equality of what?" is to be considered as the central question any normative theory on ethical judgements tends to answer, determining the object of justice. He first settled the issue in his eponymous Tanner Lecture (1979)—which was published one year after ("Equality of what?", 1980), and which is also the occasion to shed light on what he considers to be the limits of welfarism and utilitarianism, especially as consequentialist doctrines, thus lacking the procedural dimension of choice according to him—and later developed it in his book *Inequality Reexamined* (1992).

However, both writings do not focus exactly on the same issues and this difference is somehow characteristic of the evolution of Sen's thought, notably concerning his defense of capabilities as the relevant answer. His strong concern for this question refers to the will of identifying the aspect of human lives that must be equalized in

³⁰ Sen also raises the specific issue of the "conversion handicap" regarding disabled people, that is "the difficulty in converting incomes and resources into good living, precisely because of their handicap" (Sen, 2009, p. 258), nevertheless, conversion difficulties can concern all persons, disabled or not, as variables such as the familial or geographical environment can influence people's capacity to convert resources into actual levels of well-being.

order to support a fair society, but also the criterion on which to rely in order to detect and evaluate inequalities in real social situations. This aspect is presented as central for any conception of social justice:

“The central question in the analysis and assessment of equality is, I argue here, “equality of *what*?” I also argue that a common characteristic of virtually all the approaches to the ethics of social arrangements that have stood the test of time is to want equality of *something*—something that has an important place in the particular theory”. (Sen, 1992, p. ix)

Seeking an answer to “Equality of what?” involves promoting one specific “something”, namely a content of equality—for instance, resources, capabilities, gender, etc. The content refers to what Sen calls a “space of equality” and it appears that a large possibility of spaces can serve as the basis for a normative theory. The space of equality promoted by a theory is the answer it gives to the question “Equality of what?”. Now, Sen builds his own conception of equality in terms of space in reaction to three main visions as we started mentioning. From revealing the shortcomings of utilitarian, total utility and Rawlsian equalities³¹, he draws his concept of “basic capabilities” and defends it as the right space of equality—basic capabilities referring to an extended form of Rawlsian “social goods”, focusing on the effective possibility of people to choose between different options in order to realize the type of life they value. However, our purpose here is not to assess whether “basic capability equality” constitutes the right space to be promoted for social justice or not, but to understand the concept of space itself and its importance regarding ethical judgements and normative theories. Moreover, Sen’s own conception in terms of “basic capabilities” has actually evolved towards equality in terms of “capabilities” only³², and he finally admitted in his last book (2009), that capabilities are not to be regarded as the absolute relevant space in that it presents shortcomings too³³.

³¹ His criticism is essentially addressed against their lack of concern for the “fundamental diversity of human beings” (Sen, 1980, p. 202) and the limitation of the conceptions thus involved.

³² Especially in order to avoid the “culture-dependent” aspect of basic capabilities, in the “weighting of different capabilities.” (*Ibid.*, p. 219)

³³ Notably as it does not allow reflecting the procedural dimension of freedom, the process of choice in itself: “A theory of justice—or more generally an adequate theory of normative social choice—has to be alive to both the fairness of the processes involved and to the

The notion of space in Sen's conception is then central for our research as we assume it reveals the dual dimension of equality, as both a *general* concept every normative theory relies on and a *particular* one in the sense that each theory promotes a specific content of equality. It thus denotes a typical tendency for contemporary social justice theories: they all take equality into consideration, but as seeking for one *particular* space in which it should be realized, allowing at the same time inequalities to raise legitimately in some others³⁴. According to Sen, a normative theory cannot be considered as complete unless it formulates an appropriate answer to "Equality of what?", which makes it a major concern—the "central question" (Sen, 1992, p. ix). The "space of equality", also referred by as "equality of something" (Sen, 2009, p. 291) constitutes the particular content given to equality in one specific theory, and thus varies from one conception to another. This "something" refers to one theory's central aspect, meaning social justice has always something to deal with equality, but in a particular form of application. Sen sometimes calls it the "focal variable", as the specific variable on which the process of equalization must apply:

"Equality is judged by comparing some particular aspect of a person (such as income, or wealth, or happiness, or liberty, or opportunities, or rights, or need-fulfilments) with the same aspect of another person. Thus, the judgement and measurement of inequality is thoroughly dependent on the choice of the variable (income, wealth, happiness, etc.) in terms of which comparisons are made. I shall call it the 'focal variable'—the variable on which the analysis focuses, in comparing different people". (Sen, 1992, p.2)

Now, in Sen's conception, social justice is mainly about the assessment of inequalities, making the chosen focal variable the criterion from which social situations must be judged. This notion of space is also taken into consideration by many other contemporary theorists of social justice and referred by as the "*equalisandum*" notably defined as the "preferred concept of morally relevant

equity and efficiency of the substantive opportunities that people can enjoy. Capability is, in fact, no more than a perspective in terms of which the advantages and disadvantages of a person can be reasonably assessed." (Sen, 2009, p. 296-297). On this topic, see notably Baujard and Gilardone (2017).

³⁴ "The demand for equality in terms of one variable entails that the theory concerned may have to be non-egalitarian with respect to another variable, since the two perspectives can, quite possibly, conflict." (Sen, 1992, p. ix)

factors to be equalized among different individuals” (Hirose, 2015, p. 2-3), or else “an *equalisandum* claim specifies that which ought to be equalized, what, that is, people should be rendered equal in” (Cohen, 2011, p.5). Authors such as Cohen, Fleurbaey, Roemer, etc., have used it to treat the issue “Equality of What?”, developing their own account of the *equalisandum*, according to their own views on egalitarianism.

In summary, and according to Sen’s view, contemporary social justice theories must all respect an egalitarian principle as a general norm, but he suggests that equality concretely intervenes at another, particular level. Regarding “Equality of what?”, the content of equality shall vary according to the different approaches: equality of chances, of resources, in terms of well-being, etc.—each conception promotes equality as a foundational principle, but they differ concerning its content, the choice of the particular space, the variable to equalize. However, this general, fundamental level, expressed in “Why equality?” needs also to be considered: Sen sometimes refers to it as the “egalitarian formula” (Sen, 2009, p. 293), namely the common ground followed by any normative theory, however arguing that it does not need too much discussion, insisting on the importance of “Equality of what?”.

2.2. “Why equality?”: A Question of a Less Central Concern in Sen’s

Sen suggests that there is a more fundamental conception of equality, above its particular form in terms of space, as a requirement of justice which answers the question “Why equality?”. However, he asserts that this issue is of less importance; my aim here is to show that it actually plays a constitutional role regarding his own conception of justice, in that equality would be inherent to the concept of justice itself.

“Why equality?” refers to a general questioning that tends to explain the necessity of some form of equality for any normative theory, so that it actually appears as preceding “Equality of what?”, and thus as the basis to treat this second issue. Indeed, I argue that it is to be situated at a more general level of thinking, targeting the reasons for the necessity of equality, which makes equality an unavoidable principle for every contemporary theory. And this is precisely what Sen implicitly

suggests, as he establishes it as a norm from which any ethical judgement should be derived. He indeed shows that even those opposed to an egalitarian conception rely on it: “What is perhaps more significant is that equality is demanded in some basic form even by those who are typically seen as having disputed the ‘case for equality’ and expressed scepticism about the central importance of ‘distributive justice’” (Sen, 2009, p.291), so that there is, in Sen’s, an implicit commitment for the necessity of some *general* form of equality in any contemporary normative theory, which makes it a constitutional principle of justice, even a “norm”—the “egalitarian norm” as Pellé (2009) puts it for instance, also pointing at this general “ambition” to equalize the dimension of people’s lives that appears as the most essential to each theory, even for libertarian authors such as Robert Nozick, or utilitarian ones³⁵ (Pellé, 2009, p. 322-324). Pellé concludes saying that this egalitarian norm is part of the “fundamental architecture” of all theory of justice, as Sen conceives it, so that he appears reducing the problematic of justice to the object of equality (*Ibid.*, p.326), an idea that we shall develop later on, when exposing the way he sometimes exposes equality as inherent to justice.

Now, this idea of an egalitarian fundamental norm, which I shall call “*general equality*” for the rest of the argumentation, is to be related to the question “Why equality?”, and regarded as distinct from the particular type of equality put forward by the notion of “space” and the question “Equality of what?”. It is general in that it appears as a formal concept: as an absolute form of equality, it must not be realized as such; it only acts as an abstract principle that should direct the development of justice, being its *condition of possibility*, and revealing the egalitarian paradigm that surrounds contemporary social justice theories.

Indeed, Sen affirms that the egalitarian formula is to be *achieved* only within the particular “space”: “in each theory equality *is* sought in some ‘space’ (that is, in terms of some variables related to respective persons), a space that is seen as having a central role in that theory” (*Ibid.*, p. 292). This is one of the reasons why general equality is only implicitly defended by Sen: social justice must focus on

³⁵ She notably explains how Robert Nozick, although first defending the respect of liberties and thus seeming far away from egalitarian concerns, actually appears to be supporting equality in terms of access to libertarian rights according to Sen’s conception, just as utilitarianism requires the equal treatment of each person in the aggregation of individual utilities (Pellé, 2009, p. 323-324).

“Equality of what?” to be effective and provide fair social arrangements—“Why equality?” being a question of another level of thought according to him:

“The issue to address is not so much whether there *must* be *for* strictly formal reasons (such as the discipline of the ‘language of morals’), equal consideration for all, at some level, in all ethical theories of social arrangement. This is an interesting and hard question, but one I need not address in the present context; the answer to it is, in my judgement, by no means clear”. (Sen, 1992, p. 17)

He considers seeking an answer to “Why equality” is not the task of a social justice theorist, suggesting we should simply assume the necessity of general equality, especially regarding his approach, as comparative and based on capabilities: “The capability approach (...) draws on the understanding (...) that the really critical question is ‘equality of what?’ rather than whether we need equality at all in any space whatsoever” (Sen, 2009, p. 293). And this is why “the battles on distributional issues tend to be not about ‘why equality?’, but about ‘equality of what?’” (*Ibid.*, p.295). And already in “On the Status of Equality” in 1996, he was arguing that

“The really engaging questions about the “status of equality” concern (a) the choice of the space and form in which equality is to be sought (“equality of what?”), and (b) addressing conflicts between the claims of any particular type of equality and other considerations, including other types of equality (“what relative significance to attach?”). The status of equality is a substantive rather than a formal issue”. (Sen, 1996, p. 399)

In this previous article, he seems to reject the idea of what we call general equality as playing a role in social justice considerations, which should then concentrate on the determination of equality’s substance, that is its particular content—answering the equality of what question. However, I tend to defend the importance of the why equality question and its formal dimension for Sen’s conception of justice, as it has implications regarding the debate on the transcendental and comparative approaches, but also as it reflects a statement about contemporary societies and a

new paradigm of justice as based on the principle of impartiality, which appears inherent to justice, at least since Rawls' theory (1971)³⁶.

As already shown in the introduction, Sen goes even further in asserting the worthlessness of "Why equality?", when he referred to it as the "poor man's question" (Sen, 1992, p. 12), so that he clearly addresses "Equality of what?" as the central and relevant issue, and once it is treated, then "Why equality?" no longer needs justification in that the reflection on equality is already engaged. However, one can still find in Sen's writings, and especially in the *Idea of Justice*, some evidence of his concern for this question, especially when he relates general equality to the concept of impartiality, which he describes as a fundamental requirement for social justice. Indeed, although he rejects the need to justify the necessity of formal equality, that is to say to answer "Why equality?", he develops a lot on the importance of impartiality regarding ethical judgements. He introduces the fundamental nature of formal equality and impartiality when acknowledging the too far-reaching aspect of the issue:

"What gives the shared characteristic [*i.e.*, equality as the basis for all normative theories] such plausibility? This is a grand question to which we can hardly do justice here, but it is worth considering the direction to which we must look to seek a plausible answer.

The demand for seeing people as equals (in some important perspective) relates, I would argue, to the normative demand for impartiality, and the related claims of objectivity. This cannot, of course, be seen as a freestanding answer, complete in itself, since acceptable justifications for impartiality and objectivity also have to be scrutinized". (Sen, 2009, p. 293-294)

Now, Sen precisely goes on detailing the concept of impartiality and its link to equality, which makes him suggesting, implicitly, the importance of "Why equality?".

³⁶ In *A Theory of Justice*, John Rawls asserts impartiality as the necessary condition for the elaboration of fair principles of justice, through the device of the veil of ignorance in his original position (1999 (1971), p.16-18; p. 315; p. 453).

SECTION 3. “Why Equality?” and the Impartiality Requirement of Justice: A General Conception of Equality

This second section aims at showing the role and fundamental nature of the question “Why equality?”, especially in Sen’s thought, through the analysis of impartiality, that he promotes as a constitutional requirement for any ethical judgement and thus as the normative basis for any theory of justice. Now, this view of impartiality involves the necessity of “equal consideration”, which leads to an inclusive form of social recognition, as it refers to an “encompassing” conception of justice. Recognition appears as a key issue regarding Sen’s account of equality in that it refers to the specific expression of impartiality in the context of his idea of justice: impartiality is the modality through which institutions acknowledge people as subjects of justice. I will then show how Sen understands impartiality in terms of general equality so that this normative imperative of impartiality constitutes his answer to the question “Why equality?”.

3.1. Impartiality as the Normative Basis for any Theory of Justice

The conception of equality as a fundamental requirement for any theory of justice is to be found mainly in Sen’s *Idea of Justice*: the “egalitarian formula” is necessary in the sense that “in the absence of such a requirement a normative theory would be arbitrary and biased. There seems to be a recognition here of the need for impartiality in some form for the viability of a theory”³⁷ (Sen, 2009, p. 293).

The close relation between impartiality and equality is there assumed and expressed in terms of interdependency: Sen moves swiftly from one concept onto the other without transition, asserting their almost synonymic attitude. The

³⁷ Sen already acknowledged in 1992 that “even before a specific space is chosen, the general requirement of the need to value equality in some space that is seen to be particularly important is not an empty demand. This relates to the discipline imposed by the need for some impartiality, some form of equal concern. At the very least it is a requirement of scrutiny of the basis of the proposed evaluative system. (...) Even at this general level, equality is a substantive and substantial requirement” (Sen, 1992, p.24) – especially as a means of justification.

necessity of impartiality as the basis of a theory of justice is here settled as a means of justification: without this requirement being met, one cannot speak about “justice” according to Sen, who thus features a system in which the terms equality, impartiality and justice answer reciprocally to each other, are equivalent.

General equality thus intervenes as a constitutional principle, inherent to the concept of justice itself. The egalitarian norm is promoted as an absolute rule in Sen’s work, on which any decision of justice concerning the political and social arrangements, or the evaluation of social situations, should be based, which finally makes it an *a priori* principle, a condition of possibility for justice to express. Already in *Inequality Reexamined*, he asked “whether ethical theories must have this basic feature of equality to have substantive plausibility in the world in which we live?” (Sen, 1992, p. 17), namely “Why equality?”. Now, the demand for equality refers to a will of justification, as “the absence of such equality would make a theory arbitrarily discriminating and hard to defend” (*Ibid.*)—meaning there could be no justice without impartiality and there is no such thing as impartiality without a fundamental, general conception of equality that determines a large principle of non-discrimination applied everywhere within the borders of the considered community of justice—a community of justice being the whole of the citizens whose life is framed by the same rules of justice.

General equality thus refers to this conception of impartiality and intervenes at a normative level: “Why equality?” promotes an abstract form of equality, even formal, but which is not to be found in reality, to be actualized as such. It represents the *condition of possibility* of justice, not its goal. Indeed, just as impartiality cannot be fully and perfectly effective as embodied in human nature which is everywhere suffused with some inclination towards personal interest, one can hardly conceive such a complete state of equality³⁸. Particular equality, or equality in the chosen space however, is then to be considered as the *object* of justice and can in this sense differ from one theory to another, whereas general equality is constant and relates to a transcendental perspective—particular equality allows comparisons.

³⁸ Although Sen offers a well-developed theory of democracy (1999) in which appear the tools needed to provide the fair conditions of real deliberation, among which lies impartiality. This theory has been said demanding (Cohen, 1993; Bonvin, 2005), but Sen argued in the sense of incompleteness, as a condition for realizing his constructive idea of democracy – a point we shall develop later on.

Now, general equality as the expression of impartiality has a specific role in the elaboration of principles of justice: as its condition, it determines a context of “non-discrimination”, namely of “equal consideration”, which is settled as unavoidable: “The need to defend one’s theories, judgements, and claims to others who may be—directly or indirectly—involved, makes equality of consideration at some level a hard requirement to avoid” (Sen, 1992, p. 18). Thus, what we called “general equality” as based on the impartiality exigency, also expresses itself in terms of “equality of consideration”: each individual, each life, each interest, has to be taken into account according to a same measure by the institutions, and has to receive the same level of recognition. Impartiality and equality join on the ground of treatment towards the obligation of “equal consideration”, that is to say of a social form of recognition, bestowed by the institutions.

This general type of equality, which is supposed to be recognized *a priori* between all the members of the same community of justice, regardless of their own personal characteristics, is therefore the principle which legitimizes the considered theory and determines its conditions of elaboration with its concrete dispositions, through the prism of impartiality, as the modality of taking into account the members of the considered community of justice. Indeed, Sen reminds us that “the demand for seeing people as equals (in some important perspective) relates (...) to the normative demand for impartiality, and the related claims of objectivity” (Sen, 2009, p. 293-294), those being linked to the requirements that the process of public debate has to meet and thus to the individuals’ power of asserting their own interests. Finally, regarding Sen’s thought, we could answer the question “Why equality?” by *the need for impartiality*.

It is therefore question of equality as a *norm*, to which any theory of justice has to conform and that relates to the issue of recognition: “seeing people as equals” implies for the determined institutions to recognize a strict identity between each member of society, as citizens, entitled to the same fundamental, basic rights, acknowledging their equal status as moral beings (which somehow recalls Anderson’s view on democratic equality exposed in the previous chapter). Without this uniform and global process of recognition, the considered theory of justice would suffer from partiality and would thus be out of the field of justice, of its own nature: this is how Sen establishes the necessity of this general form of equality, although he does not call it this way himself.

3.2. Of Equal Consideration: The Issue of Recognition

The close link between equality and impartiality reveals that general equality is, as a conditional norm for ethical judgements, related to the principle of treating each agent or member of a community of justice and its interests with an equal attention, disregarding the individuals' own features and abilities (in an *a priori* perspective, which precisely makes it formal). The requirement of impartiality, which relates to the one of equal consideration, allows avoiding the pitfalls of arbitrariness, aiming at the same time to give everyone a voice, an equal power of asserting their interests, leading to a conception of equality in formal political terms. The importance of impartiality regarding contemporary theories of justice reveals a new paradigm that puts forward equality as the central norm of justice, and thus offers an argument for justifying this egalitarian norm that structures contemporary social justice theories.

So it actually appears that we do have in Sen's work an explicit general idea of equality, despite his conception in terms of "space", aiming at promoting the equalization of one particular variable. In this formal and general sense, which integrates the necessity of impartiality, the demand for equality is linked to a will of total inclusion, or "universality of inclusion", according to the terms of Mary Wollstonecraft, relayed by Sen (2009, p. 117). This puts forward an "encompassing" conception of justice for which any form of exclusion implies the negation of justice itself, as, when being *a priori*, it necessarily comes under arbitrariness and contradicts the principle of impartiality. Impartiality is thus also connected to the idea of total inclusion (regarding the borders of the considered community of justice), and even to universality, which makes equality—operating as impartiality—the basis for an all-encompassing conception of justice, at this general, even transcendental level³⁹. Concerning this idea of inclusion, of universality, Sen says that:

³⁹ These ideas of universality of inclusion and of all-encompassing conception echo to the concept of totality as present in Hegel's work, although we do not assume this parallel was made on purpose by Sen. However, it is greatly relevant for our present reflection as, and it will be developed in the next chapters, this idea of totality directly refers to the concepts of State and citizen which play a major role in Hegel's theory regarding the realization of actual freedom. Further, it is this "totality", as a formal type of equality which aims at some universal identity, that is being called into question by Emmanuel Levinas, as we shall see in Chapter 4.

“Contemporary moral and political philosophy has by and large gone in Mary Wollstonecraft’s direction, in denying that possibility and demanding that everyone be seen as morally and politically relevant. Even if, for one reason or another, we end up concentrating on the freedoms of a particular group of people—for example, members of a nation, or a community, or a family—there has to be some kind of pointer that locates such narrow exercises within a broader and capacious framework that can take everyone into account. Selective inclusion on an arbitrary basis in a favoured category—among those whose interests matter or voices count—would be an expression of bias. The universality of inclusion of the kind that Wollstonecraft demands is, in fact, an integral part of impartiality”. (*Ibid.*, p.117)

He expresses here the foundations of the idea of equal treatment, or formal equality, as being based upon a “universalist demand” (*Ibid.*). This demand implies to include each of the members of one community of justice—and even perhaps beyond, every man as a reasonable being—within a global sphere where all persons’ moral and political capacities are equally acknowledged. Now, this idea is directly connected to Kant’s work, as Sen explains⁴⁰. And relying on Kant involves for Sen to take into account the issue of reason (that is, also, the reason-based justification of equality seen in Chapter 1), leading to consider a strict moral equality between any being supplied with it, the goal being the guarantee of people’s autonomy (namely their capacity to choose their own principles of life, to have their own conception of the good). Besides, Sen acknowledges Kant’s role regarding the contemporary vision of impartiality: “The insistence on impartiality in contemporary moral and political philosophy reflects, to a great extent, a strong Kantian influence” (*Ibid.*, p. 124), suggesting its deep link to equality of consideration, and thus offering the assumption that the demand for impartiality is itself founded on the reason-based justification.

Then, on the basis of impartiality, a theory of justice aims at instituting a community of morally and politically equal subjects, that is to say, to whom the same faculty of having a conception of the good and of choosing for themselves their own principles and the same capacity to assert this conception and their interests are identically recognized—following the argument of reason. This

⁴⁰ “No one perhaps did as much as Immanuel Kant to make that universalist demand understood, including principles of the kind that are captured in the often-repeated Kantian formulation.” (Sen, 2009, p. 117-118)

conception also directly refers to Rawls's one in that he considers impartiality, that he develops through the concept of the "veil of ignorance", as the condition of justice in the sense that it allows people to enforce and develop their "moral powers", namely their capacity to have a conception of the good and of being reasonable, of having a sense of justice, which makes them "moral persons" and are considered as such by the institutions. The moral powers are "the basis of equality, the features of human beings in virtue of which they are to be treated in accordance with the principles of justice" (Rawls, 1971 [1999], p. 441): they refer to the common basis on which the members of a community of justice are to be acknowledged by the institutions, that is to say as equals, as equally morally empowered—because first of all regarded as rational beings.

Thus, this total inclusion within the political sphere would determine a context of impartiality where everyone would be "morally and politically relevant" (Sen, 2009, p. 117). In the broadest sense, the principle of general equality which supports the idea of universality of inclusion should then apply globally in order to guarantee every human being the recognition of his own nature and the means to express it. We now understand how much equality is essential for a theory of justice, not only in terms of legitimacy or justification but also for its object, the guarantee of individuals' autonomy, in the sense that recognizing *a priori* to everyone the same fundamental moral and political capacities should lead to the guarantee of the minimal conditions of self-realization according to freely chosen principles, which is one of the main issues in Sen's thought, as related to the concept of capabilities. And this idea relates to what has been discussed in Chapter 1, namely that modernity and the evolution of the conception of the being brought specific exigencies regarding the actualization of freedom, equality being an essential one.

Finally, this "egalitarian formula" seems to be properly related to the context of contemporary social justice theories: it is linked to a demand of impartiality implying a certain universalism, just as the idea of universality of inclusion (Wollstonecraft, 1790). And it seems that Sen also is demanding for a structure of general and global equality in the consideration of each member of a community of justice, despite his conception in terms of "space". Now, it is precisely this structure of equality (in the recognition and the treatment of the interests of each) that actualizes the principle of impartiality necessary to any theory of justice, for it

to be viable. So we see why equality has been raised by most of the theorists to the level of a necessary norm: it is now an omnipresent value in political philosophy, and especially as related to the issue of liberty.

It then appears that Sen settles a distinction between two levels of equality, that apply to every contemporary social justice theory: the particular one of the space of equality, answering “equality of what?”, and the general one, answering “why equality?”, and which intervenes prior to the determination of the principles of justice and the particular space. This second level of equality, as a formal and normative demand, involves a universal perspective and as such, an absolute, even formal conception of inclusion, so that it emerges as a conditional principle. Now, shedding light on this account of equality has methodological implications regarding Sen’s idea of justice, notably with regard to the discussion concerning the transcendental and the comparative approaches.

SECTION 4. Impartiality and Transcendence

In this section, I assume that general equality could be included in what Sen calls a “transcendental approach”, which aims at identifying the ideal principles and institutions of justice (Sen, 2009, p.5-6), as absolute and abstract principles that would be valid for everyone, and which is opposed to the comparative method—that Sen claims to defend—which is “concerned with social realizations” (*Ibid.*, p. 7), with the assessment of existing inequalities. In order to show this, I will notably rely on his argument concerning “open impartiality”, as a relevant tool for public debate and the determination of the principles of justice, or rather the criteria for the evaluation of inequalities. Now, as already noticed, Sen explicitly rejects the transcendental approach. However, many articles in the recent literature⁴¹ tend to show that this position is not as clear and definitive as it appears, for different reasons. My argument is to show that impartiality in Sen’s conception, as related to general equality, could be qualified of transcendental in the sense that it is inherent to the idea of justice—so as an absolute principle—, and should thus not be limited in application to the only frame of the chosen space. To do so, I start with the distinction that Sen makes between “open” and “closed” impartiality, for which he refers mainly to Rawls’s conception, and then examine how the way he introduces the concept of human rights as conditioned by impartiality provides support in favour of the relevance of the transcendental approach for his own idea of justice.

4.1. Open and Closed Impartiality

Impartiality is a deeply investigated notion by Sen: he develops his own conception of it, starting from Rawls’s one, which leads him to distinguish between “open” and “closed impartiality”. Defending open impartiality, and then integrating it in a reflection concerning human rights, he gradually leads his thoughts towards an idea of justice which seems to allow a transcendental dimension, although he considers open impartiality as serving the purpose of a comparative approach.

⁴¹ For instance, Gamel, 2010; Kandil, 2010; Valentini, 2011; Robeyns, 2012; Ege *et al.*, 2013; 2016.

Sen's "Open impartiality" involves the idea to open the imperative of impartiality onto a form of global community of justice. It is based on his analysis of the Smithian "impartial spectator"⁴², which leads him to assert that "the idea of addressing the issue of fairness through the device of the Smithian impartial spectator allows some possibilities that are not readily available in the contractarian line of reasoning used by Rawls" (Sen, 2009, p. 70). So he builds open impartiality under the influence of Smith but especially in order to overcome what he considers to be the shortcomings of Rawls's theory of impartiality: he asks whether "the exercise of impartiality—or fairness—[is] to be confined within the borders of a country with a shared sovereignty, or within a culture with shared attitudes and priorities" (*Ibid.*, p. 402). And this question precisely intervenes in the frame of his critique of the Rawlsian veil of ignorance, for which impartiality is according to him submitted to "parochialism", meaning the principles of justice determined in the "original position" are necessarily linked to the political tradition of the considered community, which is then the only frame of debate and decision. Sen criticizes this reasoning process that he calls "closed impartiality", as rolled out in the restricted area of the political and social conceptions mainly accepted within the limits of one particular community⁴³. He rather supports what he calls "open impartiality", as an "interactive process of critical scrutiny, open to arguments coming from others and sensitive to the relevant information that can be obtained" (*Ibid.*, p. 358-359), that is to say a reasoning process that goes over political, cultural and geographical borders—a tool for a broad public debate⁴⁴.

He also mentioned the impartial spectator earlier, when outlining his theory of democracy (1999), to show the importance of being able to be neutral, or more precisely to have a decentred look regarding the interests of local actors, mainly in

⁴² "One of Smith's major methodological concerns is the need to invoke a wide variety of viewpoints and outlooks based on diverse experiences from far and near, rather than remaining contented with encounters – actual or counterfactual – with others living in the same cultural and social milieu, and with the same kind of experiences, prejudices and convictions about what is reasonable and what is not, and even beliefs about what is feasible and what is not." (Sen, 2009, p. 45). On Sen's use of the Smithian Impartial Spectator, see also Bréban *et al.* (2014).

⁴³ Valentini (2011) however argued that Sen's account of the Rawlsian theory as transcendental institutionalism is misguided in that "for Rawls and the Rawlsians, the process of theorizing about justice is inherently dynamic, and open-ended" (p. 314).

⁴⁴ On the influence of Rawls on Sen's conception of impartiality, see also Gilardone (2015, p. 213-220).

order to neutralize the concerns for individual interests, and thus respect their diversity in the process of collective choice. Now, Sen qualifies democracy with the terms “universal value”, so that it echoes to general equality, and thus seems to rely on it⁴⁵. And actually, Sen links the question of impartiality to the one of human rights (Sen, 2009, p.366). Indeed, impartiality refers to the ability to take into account the interests of each individual, avoiding any type of discrimination, at a general, formal level. Now this also relates to the issue of global justice: how to determine a global frame in which the interests of the whole humanity are taken equally into account?

Open impartiality thus allows avoiding parochialism, and this appears as necessary to legitimate any principle of justice that would tend to assume the role of a human right, in the sense it would concern every human being, each individual, without any distinction, as based on the principle of general equality. Open impartiality appears then as a relevant tool to express the egalitarian norm in the broadest way. However, as related to this issue, the distinction between closed and open impartiality is not that relevant to us as it is more a matter of scale (regarding the considered community of justice—global, national, regional, cultural...), even though it is only open impartiality, as Sen puts it, that can support a universal application of impartiality.

Now, this conception in terms of open impartiality, as related to the issue of fundamental human rights, implies an all-encompassing structure. Indeed, according to such a conception, equality has to be recognized everywhere, which makes it an even more fundamental principle. And it is precisely why general equality should intervene only in the political sphere, meaning that what is recognized is an equal power to participate in the public debate, the same basic rights for all—namely equal conditions of possibility for liberty—through the acknowledgment of the equal moral nature of people by the institutions (leading to a formal totality). Sen also asserts that

⁴⁵ However, his theory of democracy seems definitely opposed to any formalism; it seeks for the concrete dispositions that allow to go beyond the rule of majority, for achieving a “constructive” democracy, a “democracy in action” (Bonvin, 2005), that puts forward the importance of plurality. And in this sense, it appears that general equality, as a formal principle, does not really fit Sen’s conception of democracy, but this apparent limit will be the object of Chapter 3.

“Human rights are ethical claims constitutively linked with the importance of human freedom, and the robustness of an argument that a particular claim can be seen as a human right has to be assessed through the scrutiny of public reasoning, involving open impartiality”. (*Ibid.*, p. 365-366)

By using the term “assess”, he clearly positions his thought inside the comparative approach, as it tends to the evaluation of social situations and not the determination of ideal principles of justice. However, we can consider that the assessment of the relevance of these ethical claims relates to the search of relevant universal principles of justice, thus somehow referring to a transcendental perspective.

4.2. Open Impartiality and Human Rights: A Transcendental Dimension in Sen’s Approach

Sen considers open impartiality—as based on the concept of the impartial spectator—as coming under the scope of an exclusively comparative approach of justice⁴⁶, whereas he still defends a view according to which open impartiality is the foundation for human rights, which actually seem to rely on a transcendental perspective in the sense that they require one shared fundamental principle in Sen’s conception. So here, we do not consider Sen’s conception of impartiality as founded on the Smithian impartial spectator, but we propose a new possible interpretation, in the perspective of general equality, as a conditional principle of justice. And in the end, the distinction he operates between the two approaches does not seem as rigid as he claims, notably regarding his treatment of the notion of human rights, as following:

“The notion of human rights builds on our shared humanity. These rights are not derived from the citizenship of any country, or the membership of any nation, but are presumed to be claims or entitlements of every human being. They differ, therefore, from constitutionally created rights guaranteed for

⁴⁶ Some authors however show that Sen’s understanding of the Smithian impartial spectator is sometimes misguided (see for instance Shapiro (2011), Ege *et al.* (2013), and Alean Pico (2014)). More specifically Bréban *et al.* (2015) point out the discrepancy between the “abstract” dimension of the Smithian original concept, which is involved in “individual deliberation” and the concrete nature of it in Sen’s interpretation, which projects it in the frame of “collective deliberation”.

specified people (such as American or French citizens); for example, the human right of a person not to be tortured or subjected to terrorist attacks is affirmed independently of the country of which this person is a citizen, and also is quite irrespective of what the government of that country—or any other—wants to provide or support”. (Sen, 2009, p.144)

The notion of “shared humanity” seems to relate to some idea of transcendence and so does the one of human rights as it seeks to reflect what any human being could claim on the ground of his humanity. If we consider the issue of transcendence as being related to the idea that justice relies on some fundamental principle which should apply to any considered situation—namely, in this inquiry, the one of general equality which refers to acknowledging the basic moral, or subjective, or rational, nature of every human being as such—then, Sen’s accounts of impartiality as a requirement of justice and of human rights denote a transcendental aspect in his conception of justice. Indeed, Sen states here that human rights transcend the notions of citizenship⁴⁷ or nationality, in the sense that they are to be found above these limits: they fall under the scope of the essence of justice itself, where justice becomes the possibility for humanity to realize, to actualize itself—to achieve actual freedom. In this sense, equality is deeply linked to justice, even inherent to it, as it would seek to settle the conditions for this possibility, from which no one should be left aside, considered “irrelevant”. Finally, the existence of an absolute idea of equality in Sen’s work is to be found notably in his conception of human rights, where impartiality is taken in its broadest sense, as not taking any borders into account, namely in an “open” perspective, that meets the requirements of general equality, as prescriptive, or equal consideration. Human rights are independent from the specific dispositions chosen by the different governments of each country and seem to express the absolute conception of equality whereas the specific political constitutions reflect the idea of “space of equality”, according to what they promote specifically.

Furthermore, Sen asserts elsewhere the close link between human rights and a strong notion of obligation: “proclamations of human rights, even though stated in the form of recognizing the *existence* of things that are called human rights, are really strong ethical pronouncements as to what *should* be done” (*Ibid.*, p. 357). As “ethical pronouncements”, we see how human rights, which appear as a broad

⁴⁷ As localized, related to one specific country.

expression of justice, go beyond the political boundaries of each state's constitution. We can then assume that the essence of justice is to be found in the concept of human rights where it is expressed as being transcendental, notably regarding the kind of obligation it involves.

Hence, certain principles, and especially the fundamental principles determined in the respect of the egalitarian norm, seem to be defined according to a transcendental approach, an idea from which results the impossibility to reject this perspective in the search for justice. However, the comparative approach probably remains necessary in that it allows discussing the established principles, to question and reconsider their relevance. Indeed, justice is not something forever fixed: it cares about human situations which do not stop evolving in time and space. Finally, the comparative approach allows the determination of the relevant space of equality, for each community of justice and it makes sense that Sen supports it when he explicitly asserts that the relevant issue in terms of social justice is "Equality of what?". Again, there appears some kind of tension that needs to be maintained when thinking of the essence of justice as related to the nature of the being.

Nevertheless, and to go further, we could assume some kind of similarity of the terms transcendental and universalist approach, knowing the second incorporates, according to Sen, open impartiality:

"In overcoming the limitations of 'exclusionary neglect', use can be made of the idea of open impartiality embedded in a universalist approach, of the kind that relates closely to Smith's concept of the impartial spectator. That broad framework of impartiality makes it particularly clear why considerations of basic human rights, including the importance of safeguarding elementary civil and political liberties, need not be contingent on citizenship and nationality, and may not be institutionally dependent on a nationally derived social contract". (*Ibid.*, p. 144)

Finally, if we consider "transcendental" as not being much about the search for ideal principles of justice or perfectly just institutions that would be valid everywhere and forever (which is clearly a view that Sen rejects just as we do), but more for fundamental ones, as in a "universalist" approach, then open impartiality and human rights, as in Sen's conception, seem to rely on some transcendence, in

that the matter of justice is to avoid any kind of “exclusionary neglect”, which makes general equality a relevant principle.

Thus, although Sen claims that we should simply abandon the transcendental approach in favour of the comparative one, we rather see in his views on impartiality and human rights that it is not exactly the case. Moreover, he brings himself a discussion concerning the viability, the feasibility of human rights as fundamental ethical principles, defending the position that such a requirement is not a necessary one: “Human rights can serve as the motivation for many different activities, from legislation and implementation of appropriate laws to enabling help from other people and public agitation against rights violations” (*Ibid.*, p.366), adding that feasibility is not a “necessary condition” for human rights to be viable (*Ibid.*, p. 384). So human rights appear as related to general equality in the sense of a condition for justice. They are abstract and need not to be realized *per se*, as being the principle of something else, just as formal equality frames the determination of the relevant space of equality. Likewise, as seen in an abstract perspective, the transcendental approach does not necessarily tend to a perfect achievement of the principles it grasps, which is a point shared with Robeyns (2012) when saying that “completeness is not required for transcendental theories to be useful: in fact, many transcendental theories are plural and often somewhat vague and thus require further interpretation before they can be put into practice” (Robeyns, 2012, p. 161). The comparative method can then act as an adjustment tool, according to the real situations that are met throughout the world.

General equality thus defines a condition for justice and freedom to actualize, a principle that moves the realization of concrete particular dispositions, but not a goal to be completed as such, contrary to the determined content of equality, the “space”. General equality thus appears as a transcendental idea, not in the sense of an ideal to be realized, but as regarding its inherence to the essence of justice as conceived in contemporary times, and also its interdependency with freedom as discussed in Chapter 1: the egalitarian paradigm of justice is founded on reason and this leads to ideas such as universality of inclusion or the fundamental demand of impartiality.

SECTION 5. Concluding remarks

The analysis led in this chapter tried to show both the presence of a general conception of equality in Sen's idea of justice, and the relevance of the transcendental dimension for his own approach, although he only implicitly mentions the first and explicitly rejects the second.

By exploring the reasons for the necessity of equality in contemporary social justice theories, that Sen acknowledges himself, we saw that the issue is closely connected to the concept of impartiality as a fundamental requirement, expressing the very nature of justice: we thus got to the second argument for the justification of the contemporary social justice theories' egalitarian paradigm. It led us to understand the idea of equality in a normative way, in *general*, even formal terms, that allows asserting the legitimacy of a theory, through the impartiality-based argument. Thus equality, besides being *of something*, is also a constitutional principle of justice, being the expression of the demand for impartiality, which finally makes it the condition of possibility of justice itself. Moreover, it is in Sen's analysis of impartiality, notably in his conception of "open impartiality" as related to the issue of human rights, that we found arguments to defend the view according to which he does not completely reject the transcendental approach but rather implicitly develops such a conception.

However, this formalism of general equality can happen to be problematic, and especially regarding Sen's conception of justice, that he developed against theories which were lacking, according to him, the dimension of human diversity, and more precisely which were missing the *actual* opportunities people have to realize what they tend at. General equality, although necessary, cannot take into consideration these specific, individual cases (and as Chapter 3 will developed, should not), and this is why the concept of space, of particular equality—and the comparative method—is needed. Indeed, what Chapter 3 insists on is the formalism of general equality that has to be deployed only in the legal sphere when put into practice. Next chapter will thus be the occasion to deepen the considerations regarding the concept of recognition that are engaged by the ideas of prescriptive equality, equal treatment, etc., and thus to come back to Hegel's dialectics of the universal and the particular and Honneth's theory of recognition. The egalitarian paradigm indeed

involves a reflection on its limits regarding the object of justice, that is freedom. The next chapter will stress the perspective of recognition to get a better understanding of the stakes of actual freedom, and the role of general equality regarding it, and also regarding Sen's conception in terms of capabilities. Overall, it will stress the existence of this tension that becomes more and more present.

CHAPTER 3

Equality and Recognition: The Ethical Dialectics in G.W.F. Hegel's

The principle of equality has been asserted as a fundamental requirement for any normative theory, notably by Amartya Sen (1992, 2009) as we outlined in the previous chapter. This is to be related to the demand for impartiality, which leads to understand equality for social justice in a general and formal way, and, I suggest, determines people as legal beings. This third chapter tends to show that this formal idea of equality can only be enforced within the institutional sphere, as an artificial, constructed form of equality, which supposes a *mediation* between the private parties. This implies a process of recognition that I shall call “objective” in that it seeks to objectivize people's situations, in order to establish a symmetrical social relationship, thus joining the ground of what Elizabeth Anderson calls “democratic equality”. While suspending people's subjectivity, it allows acknowledging their equal moral nature, their autonomy. This process constitutes a first step on the way to achieve actual freedom which we consider as the object of social justice—a *necessary* however insufficient condition. Indeed, relying on G.W.F. Hegel's social theory, I argue that subjectivity needs a space to emancipate so that people are granted with the right to follow their own interest and choose the principles of life they have reason to value, so that institutions consider their differences in terms of opportunity to achieve them—thus relating to Amartya Sen's conception in terms of capabilities. By further exploring the Hegelian dialectics of the universal and the particular, this chapter aims at showing the complementarity of both an objective and a subjective form of recognition in the frame of social justice theories, and notably as related to Amartya Sen's conception in terms of capabilities, thus shedding light on the possible links which are to be made between Hegel's dialectical system and Sen's idea of justice. This chapter is then also a first mention of the limits of general equality, and tends to reveal the necessary tension between equality and inequality that characterizes a complete conception of justice, finally

suggesting that justice is not only about equality, that is its essence cannot be reduce to it.

SECTION 1. Introduction

Throughout the elaboration of his conception of justice Amartya Sen formulates the idea according to which impartiality constitutes the necessary requirement of every normative theory. As such, it is deeply connected to equality in his own idea of justice, and more precisely to a general form of equality which can be viewed in terms of equality of consideration, or equal treatment, from a universalist perspective. In this chapter, I shall refer to what I designated to be general equality as “formal equality”, that is, still an abstract form of equality—a general principle that provides a basis for normative theories and implies a broad conception of impartiality, but emphasizing the formal dimension of it as a pure legal concept. From this reconsideration of equality as a general and formal principle which involves a “universality of inclusion”, impartiality is to be understood as a matter of recognition: the role of formal equality is to enforce recognition of citizens as equal moral subjects, acknowledging their autonomy—following the reason-based argument, and thus constituting the condition of possibility of justice.

1.1. An Outline

Now, this present chapter investigates this idea of formal equality in the light of a Hegelian perspective, in order to stress this “recognition” aspect and show its importance regarding normative theories and ethical judgements. I assume that the line of thought developed since G.W.F. Hegel can help in reconsidering stakes of distributive issues, and especially their dual nature, as involving a specific dialectical movement from the universal to the particular, which are the two fundamental principles of the ethical life in his *Philosophy of right* (1820), namely the moment of justice. Indeed, recent studies have suggested that this work constitutes in itself Hegel’s theory of justice⁴⁸. From Hegel to Axel Honneth, going through the works of Alexandre Kojève, the issue of recognition as related to

⁴⁸ For instance, Axel Honneth calls it a “normative theory of social justice that, by reconstructing the necessary conditions of individual autonomy, tries to determine what social spheres a society must comprise in order to give all its members a chance to realize their self-determination” (Honneth, 2010, p. 18).

political and moral theory has been deeply investigated and I assume that applying those analyses to the framework of contemporary social justice and notably to Sen's own conception is relevant in that they provide consistent normative categories to deepen the understanding of their stakes, notably the issue of achieving real freedom, so as linked to Sen's conception in terms of capabilities—who however does not include this concept in his works. This chapter is indeed the occasion to go further the idea of general equality, still arguing for its necessity, but suggesting its limits when considering more specific issues. Moreover, considering a Hegelian perspective involves taking into account the nature of the modern individual, that is to say, mainly, a self with a free-will, evolving through institutionalized spheres and whose right to follow his own interest is acknowledged.

The aim of the chapter is thus to deepen and develop, in the light of Hegelian concepts, the understanding of the idea of formal equality, showing that it implies a type of recognition that can be qualified as “objective”, as strictly institutional. It is especially in Alexandre Kojève's account of the “impartial and disinterested third party” (Kojève, 1981) that we find relevant insights concerning this objective way to achieve equality of consideration, involving a formal structure of equality in social relationships, applicable in a universal perspective. Indeed, the principle of interaction must there be symmetry, which allows achieving freedom at least at the legal, formal level, and this refers to recognition of identity or sameness.

However, considering one of social justice's goals is *real* freedom, objective recognition from institutions appears only as a necessary condition but not a sufficient one. The question thus becomes the following: should normative theories concentrate on acknowledging the equal, identical character of human beings, as based upon their “shared humanity” (Sen, 2009, p. 144), as a universal and uniform process of recognition of everyone's moral capacities, that is to say recognition of identity in a formal perspective, or, should it focus on the acknowledgement and even the empowerment of everyone's particularities, that is to say recognition of difference, in a particular perspective? The study of a more recent literature still related to Hegel's thought, allows foreseeing another way to consider recognition in the context of social justice as linked to the acknowledgement of people's and groups' claims regarding their particularities—of difference. This form of

recognition should allow the emancipation of subjectivity which is central for achieving real freedom according to Hegel's social theory.

1.2. Some Inputs

These recent studies notably include the works of Nancy Fraser (1995; 1996) who mainly discusses the place of recognition regarding distributive issues as related to the "age of identity politics", and Axel Honneth (1995; 2010; 2011; 2012), who mainly asserts through his theory of recognition, the necessity for modern theories of justice to "ground [their] legitimacy in the freedom of the individual or the self-actualization of social individuals" (2010, p. 172). Fraser and Honneth (2003) have different views concerning the place of recognition within the frame of social justice: Fraser tends to see redistribution and recognition claims as taking part of two separate fields while Honneth conceives redistribution as a derivative of distribution. Mostly, it is Honneth's conception that gets more support: Feldman (2002) targets Fraser's lack of development concerning "the role of the state and 'the political' in struggles over distribution and recognition (p. 410), while Yar (2001) criticizes her "overly narrow 'culturalist' understanding of recognition" (p. 289). Douzinas (2002) and Lucy (2011) focus more on the legal aspect of recognition, mentioning respectively "legal equality" or "juridical equality", joining Kojève's account of impartiality, and give insights for understanding formal or legal equality as a necessary but insufficient condition for justice—especially Douzinas (2002) claims that its "defect" comes from the universality of law which "cannot meet the demands for the full recognition of the postmodern self" (p. 379). Ege (2009) and Ege and Walraevens (2011) emphasize the specific dimension of the modern individual that must be taken into account to understand fully the notion of freedom, after a Hegelian conception, just as Honneth does in his own works, putting forward the idea of self-determination, or self-actualization. Church (2012) supports this view, claiming that Hegel "provides just such a developmental account of modern subjective self-determination that strikingly articulates the inner logic of our own contemporary theoretical developments" (p.1022). Finally, Boldyrev and Hermann-Pillath (2013a) shed light on some links that can be made between Hegel's and Sen's thoughts, aiming at "orchestrating a

Hegelian turn in Sen's approach" (p. 19), through the notion of recognition and emphasizing the role of institutions regarding the achievement of freedom. This chapter supports this view and tends to contribute to this line of thought by showing how Hegelian categories allow formalizing some implicit distinctions in Sen's concerning equality, and revealing the importance of the concept of recognition for his own conception of justice, which is almost absent from it.

In order to shed light on the formal and institutional nature of general equality through the prism of recognition, and to show its importance regarding social justice issues, but also its limits, I start with an account of formal equality as an *objective* form of recognition, only possible through the intervention of an institutional mediation such as Kojève's "impartial and disinterested third party". Then, Hegel's account of the civil society, which includes the specific nature of the modern individual, in his *Philosophy of Right* and the dialectics of the universal and the particular helps showing the importance to also recognize people's singularity in the frame of social justice. Finally, the discussion between Fraser and Honneth (2003), which precisely focuses on the relation between recognition and distributive issues, allows understanding the modern stakes of the "politics of recognition" regarding social justice and notably the acknowledgement of people's particularities. Now, recognition of singularity, or of subjectivity, may echo to the Senian concept of capability and his own idea of justice. This investigation thus seeks at showing the interdependent and dialectical relationship of objective and subjective recognition (so that general equality is not the only condition of justice and must enter in a tension with some form of inequality), as principles for normative theories, and their relevance regarding Sen's conception of justice.

SECTION 2. Objective Recognition: A Necessary but Insufficient Condition

The concept of recognition in Hegel's is central in the formation of self-consciousness (Hegel, 1807 [1977], p. 111), necessary for the modern individual to actualize freedom, which is asserted here as one of social justice's goals. Now, this process involves the experience of two opposed but also interdependent principles in Hegel's system, namely the universal and the particular, which are especially interconnected in the moment of civil society, the second of the ethical life in his *Philosophy of Right* (Hegel, 1820 [2003b], pp. 220-274). First, the analysis of the concept of formal equality precisely relies on Hegel's account of the principle of the universal as it shows the necessary general and abstract nature of the law. Second, I argue that formal equality, asserted by Sen as a fundamental requirement any normative theory should meet, is thus confined to this institutional frame, and appears as a form of recognition that can only be granted from the outside, in an objective way, which supposes an institutional mediation that can be understood in the sense of Kojève's "impartial and disinterested third party".

2.1. Formal Equality and the Universal

As the previous chapter has tended to show, Sen has developed an idea of justice which puts forward equality as a fundamental requirement for any normative theory. As based on the demand for impartiality, it is inherent to the concept of justice itself: the "egalitarian formula" (which refers to the fact that, according to him, every normative theory must include a basic principle of equality) is necessary in the sense that "in the absence of such a requirement a normative theory would be arbitrary and biased. There seems to be a recognition here of the need for impartiality in some form for the viability of a theory" (Sen, 2009, p. 293). I shall call, here, this idea of equality "formal": as a general and basic form of equality, it must not be realized as such, but only momentarily, in the specific legal sphere. The demand for equality refers to a will of justification, as "the absence of such equality would make a theory arbitrarily discriminating and hard to defend" (Sen,

1992, p.17)—meaning there could be no justice without impartiality and there is no such thing as impartiality without this formal, general conception of equality that determines a large principle of inclusion applied everywhere within the borders of the considered community of justice.

Formal equality thus refers to this conception of impartiality and intervenes at a normative level. It has a specific role in the elaboration of principles of justice: as its condition, it determines a context of “non-discrimination”, namely of “equal consideration”, which Sen settles as unavoidable (*Ibid.*, p. 18). Thus, “formal equality”, as based on the impartiality exigency, also expresses itself in terms of equality of consideration: each individual, each life, each interest, has to be taken into account according to a same measure *by the institutions*, and has to receive the same level of recognition—so that social relationships can be symmetrical. Impartiality and equality join on the ground of treatment towards the obligation of equal consideration, that is to say of a political, institutional form of recognition, of people’s equal moral capacities—and here appears the stake of autonomy, and of freedom, as an object of social justice, again, relating to the reason-based argument.

Now, the idea of equal treatment is according to Sen based upon a “universalist demand” (2009., p. 117) which implies to include each member of the same community within a global sphere where their moral and political capacities are equally acknowledged. Then, on the basis of impartiality, a theory of justice aims at instituting a community of equally “morally and politically relevant” (*Ibid.*, p. 117) subjects, that is to say identically acknowledged as *moral* beings, and which aims at providing people with the basic conditions for achieving freedom.

Formal equality is thus to be included within a universalist approach of justice in terms of political recognition, which makes it close to the Hegelian concept of right, as abstract. Indeed, considered as a “universalist demand”, equal treatment does not necessarily refer to a global exigency: the principle of the universal, as determined in Hegel’s, is more of an image that points at the character of social institutions, under which people share the same principles of action. Then, the universalist character of formal equality implies that the related type of recognition is purely institutional. Indeed, as formal it cannot be mutual, as in two distinct parties who would recognize each other, and this is clear through the dialectics of the lord and the bondsman (Hegel, 1807 [1977], pp. 115-119), but more precisely

as deepened by Alexandre Kojève (1981)⁴⁹. He indeed shows the necessity of the intervention of a third party to guarantee impartiality and effectiveness in the acknowledgement of equal consideration of the members of a community which leads to understand formal equality in institutional terms only.

2.2. Kojève's "Impartial and Disinterested Third Party": The Necessity of an Institutional Mediation

As a general norm for social justice theories, formal equality operates as an abstract principle which tends to build up a structure of symmetrical social relationships between the members of a community, and relates in this sense to Anderson's concept of democratic equality, although the stake here is to consider only the formal dimension of it: considerations about the positive dispositions regarding people's empowerment do not have their place when looking at formal equality (as the principle that actualizes the demand for impartiality), and it is precisely striking in Kojève's account of the legal structure that is needed.

In Kojève's, the form of recognition that is at stake cannot be based on mutuality or reciprocity between the individuals themselves: it must come from the community, the institutions, in order to actualize the principle of impartiality. Indeed, the process of intersubjective recognition implies many contradictions and cannot be fulfilled as partiality seems always involved given the individuals' subjectivity. The role of institutions is then to provide an objective frame in order to realize this structure of equality, that is necessary to acknowledge equal autonomy as the first condition towards real freedom.

Now, Alexandre Kojève shows in his *Outline of the Phenomenology of Right* (1981) that this kind of normative imperative of impartiality for justice is to be actualized by the intervention of a third party, acting as an institutional mediation allowing to overtake the unilateralism which characterizes the struggle for recognition model. According to him, the law that realizes justice incarnates in the

⁴⁹ Kojève, from his reading of Hegel, actually developed his own interpretation of the struggle for recognition, getting away from the possibility of mutuality in the process of recognition. He rather advocates in favour of a unilateral structure, what Abid (2012, p.6) pointed out as problematic, but is actually relevant regarding the idea of formal equality. For the specificities of Kojève's interpretation of Hegel, see also Kervégan (2008).

person of the “impartial and disinterested third party” (Kojève, 1981, p. 257), in the sense that the interaction between two individuals, each fighting to gain the other’s acknowledgement, is first determined by an unsatisfactory outcome, as the recognition which comes out of it is not only unilateral but also ineffective, just as Hegel pointed out before:

“[the lord] is the pure, essential action in this relationship, while the action of the bondsman is impure and unessential. But for recognition proper the moment is lacking, that what the lord does to himself he should also do to the other, and what the bondsman does to himself he should also do to the other. The outcome is a recognition that is one-sided and unequal.” (Hegel, 1807 [1977], p. 116)

Indeed, the struggle for recognition as in the lord and bondsman dialectics relies on the opposition between the victor and the vanquished, where only the first one is acknowledged by the second, and this recognition is not even effective in this relation, as the latter is not capable of an actual act of recognition, in the sense that he is not himself recognized. In such a disposition, the acknowledgement of the lord by the bondsman is only a “pure illusion” (Kojève, 1981, p. 241): the bondsman is qualified as such for he abandoned the struggle and is thus assimilated to an “animal”. Now, according to Kojève, recognition relies on the “anthropogenic desire”, namely a desire which concerns another desire, the one of “willing to be recognized”. And it is precisely the satisfaction of this desire that actualizes man as such, in that the recognition of a man by another constitutes his being in itself (*Ibid.*, p. 239). Hegel himself stated that “self-consciousness exists in and for itself when, and by the fact that, it so exists for another, that is, it exists only in being acknowledged” (1807 [1977], p. 111). Thus, if one of the parties in the struggle chooses the “animal life”, abandoning this desire, it becomes impossible for the struggle to result in an equal and effective model of recognition of both parties. This dialectics of recognition shows that one cannot be free unless the others are, and this implies the necessity of a basic strict equality, as formal, in an institutional system which aims at the individuals’ freedom. Now, formal equality can be actualized under the action of an incarnated impartiality.

The intervention of the third party is thus necessary, in order to bring a satisfying outcome, and this third party must be “impartial” and “disinterested”, after

Kojève's terms, so that it can moderate individual expectations which stand in the way of a satisfactory outcome—that is to say not being death or the abandon of the struggle by one of the parties. This third party has to allocate each “combatant” with a strictly equal, identical, form of recognition: the acknowledged parties become *interchangeable*, equal, for the one who acknowledges them—that is, for the institutions (Kojève, 1981, p. 242). Impartiality, by making the individuals interchangeable, suspend their own subjectivity, even negates—but only in the sphere of abstract law – their particularities as individuals, leaving their essence only filled with a legal status that acknowledges their moral capacity as human beings. This refers to the scheme through which the Hegelian ethical life is developed: the intersubjective relations are mediated by some universal principle and this makes them effective, satisfying.

It is thus question of an abstract form of equality that is recognized at this level, in the (momentary—as related to one sphere of sociality) negation of the parties' interests and subjectivity. Indeed, impartiality as actualized by the third party brings the individuals on a same level, by distributing an identical acknowledgement of their legal status as persons, to each of them. The intervention of the impartial and disinterested third party allows objectivizing people's interactions, by changing them into juridical situations. This is how it frees the persons from the violence of the struggle for recognition, offering a satisfactory outcome, as it grants them with an equal recognition, while making each party interchangeable, thus allowing a symmetrical social relationship, notably in terms of political power.

Ege (1987) notes that this figure of the third party constitutes “the human recognition detached from the individuals, removed from the control of the particular will, exteriorized as a law and coming back to the same individuals in order to transform them, in this movement, simultaneously and irreversibly, into legally free subjects” (Ege, 1987, p. 152). This sums up quite well the stakes of the process of recognition thus achieved, as purely legal and related to the movement of objectification described by Hegel, notably through the concept of contract. Indeed, the contract tends to objectivize the contracting parties' relation who “relate to each other as *immediate* self-sufficient persons” (Hegel, 1820 [2003b], p. 105), so that their will is then only subjective and partial, and it is a tool for the realization of justice, so based on impartiality. The stake, at this stage of the

“abstract right”, is to proceed to the suspension of the parties’ subjectivity, allowing objectivizing their will, notably in order to proceed to an exchange of property. This process of objectification allows the spirit to be out of itself, while being mediated by an objective institution, especially in the experience of formal equality, actualized through the contract, in which the individual abandons his particular and immediate substance in order to meet alterity—but still, an alterity which is recognized as the same, under the principle of formal equality.

This is why we shall call this type of recognition not only institutional or legal but also *objective*. It relies on the principle of the universal as based on abstract right, whose main function, as pointed out by Douzinas (2002) is “to help establish one part of the recognition necessary for the constitution of a full self. (...) The interpersonal relation of right offers recognition of what is universal in every particular” (Douzinas, 2002, p.390). Objective recognition constitutes one step in the dialectics of the universal and the particular: it is necessary in order to realize freedom through the development of self-consciousness but however appears insufficient: formal equality actualizes the universal principle but cannot meet the demand for acknowledging individuals’ singularity, that is a growing one in modern societies. Now, the expression of subjectivity, which is, as we saw, suspended in formal equality, is in Hegel’s system and for individual self-development something crucial, which suggests that objective recognition is not alone the constitutive principle of justice as the condition of freedom.

SECTION 3. From the Universal to the Particular: Recognizing Subjectivity

Hegel's political system involves a duality in the principles on which it relies, especially in the moment of the ethical life, where the dialectics of the universal and the particular is the most present. Now, although formal equality is clearly based on universality, and thus provides a necessary type of recognition—as objective—to ensure the minimum conditions of justice (aiming at the development of people's freedom through the actualization of self-consciousness), the recognition process does not seem complete however. Indeed, Hegel's account of the civil society shows the importance of the subjectivity's emancipation, for which objective or institutional recognition is not sufficient: formal equality acknowledges the sameness of persons making them interchangeable legal subjects, but does not provide the disposition for people's singularity to express and to be taken into consideration. What is at stake then, is to what extent institutions are responsible for the recognition of the subjective dimension of people, as in what more than their strict equal character of moral and rational beings should be acknowledged in order to fulfill their self-development, and the reasons of this responsibility (essentially including the nature of the modern being—and so the type of freedom being promoted—and the correction of unfair inequalities). This section first tends to shed light on the reasons why objective recognition constitutes a necessary but insufficient condition for justice to achieve real freedom. Then, basing on Hegel's account of the civil society, I argue in the sense of the necessity of acknowledging also people's "subjective" dimension, basing on the nature of modern society, what Axel Honneth also asserted as a crucial element to understand the institutional duties in terms of recognition and justice. It is finally here that we understand that more than a duality, it is a tension that characterizes social justice issues: the principles of the universal and the particular, the objective and subjective dimensions, must be balanced so that justice does not get reduced to general equality.

3.1. Formal Equality as *Suspended Subjectivity*

By establishing a structure of formal equality, objective recognition—provided equally by the institutions to each member of the community—bestows them with a strictly legal status which suspends the consideration of their own particularities. Individuals are left with their status of “legal person” and this designation “negates all the contingencies of existence (...). The law expresses the universal element of freedom, and right” (Douzinas, 2002, p. 388): the abstract and general nature of law is asserted as something necessary in that it has to apply to a whole community made of different members, who are specific, notably in their needs, values and preferences. This is why formal equality constitutes a necessary principle for any political structure, but also because to be fair—impartial—such a system has first to occult these differences to perform equal treatment at this abstract level in order to meet the requirement of impartiality.

However, as Hegel shows, there is also a demand related to justice that implies the recognition of people’s singularities, which appears notably in the moment of the civil society and settles the necessity of the emancipation of subjectivity within the institutional sphere (in that context of Hegel’s system, it is mainly question of ensuring individual liberty). Social justice is thus confronted to a dual stake, based on the relationship of the principles of universality and particularity, which relies on the specificities of the modern individual, to whom is recognized free-will and the right to follow his own interest, outside the political community. He is no longer determined as a self existing and realizing himself through the State—as it was the case for the Ancient model for instance—as its effective freedom is considered to be actualized mainly in the realization of what he wants for himself (and not only in his power to participate in the public life so that his happiness would be inherent to the common good).

Thus this modern individual cannot be fully understood only through the legal perspective of objective recognition. Modernity brought a new conception of freedom—essentially based on individual freedom—which puts forward notions such as autonomy and with it the right for people to develop their own conception of the good and to choose the principles of life they have reason to value. As mentioned in the first chapter, the individual has become a key notion, even paradigmatic, for modernity and this has had an impact on the way to conceive political theory and

the place of institutions regarding stakes of social justice. It is in that sense that the only institutional objective recognition is no longer sufficient, as people's specificities now intervene in the public sphere. That is what Hegel started pointing with the sphere of civil society:

“The modern state contains one specific institution which separates it decisively from earlier and less developed social orders: Hegel's name for it is ‘civil society’. (...) Civil society is the realm in which individuals exist as persons and subjects, as owners and disposers of private property, and as choosers of their own life-activity in the light of their contingent and subjective needs and interests. In civil society, people's ends are in the first instance purely private, particular and contingent, not communal ends shared with others through feelings (as in the family) or through reason (as in the state).” (Wood, *in* Hegel, 1820 [2003a], p. xviii)⁵⁰

Acknowledging the legal status of a person—objective recognition—does not include taking into consideration all her specificities as it rather tends to suspend them, making people interchangeable subjects of rights. Douzinas (2002) goes further, explaining that the law—deeply connected to the notion of formal equality—suffers from “formalism”, from “the lack of concern for the material circumstances that allow the realization of rights” (Douzinas, 2002, p. 397), thus providing only a formal type of freedom but no actual means for the individuals to enforce them. Now, this is to be related to the lack of concern for people's singularities and connected to Sen's theory of capabilities to which we will come back later: formal equality ensures the minimum (but necessary) legal conditions for realizing freedom, as based on the principles of equal reason and impartiality, but then a focus needs to be made on the specific means that each person needs in order to perform their basic rights.

Universality and abstraction are thus still at stake in modern society, so that there is a true demand for formal equality through an objective and uniform recognition of the mere human character of people as moral beings, but at the same time, people also want their self-interest to be protected and the possibility to follow their own ends according to their preferences and values, and to what they are able to realize, that is to say to live according to their own specificities, actualizing their

⁵⁰ See also Remarks of § 185 of *The Elements of the Philosophy of Right* (Hegel, 1820 [2003b], pp. 222-223).

subjectivity. And formal equality cannot proceed to the recognition of this aspect, as it can only focus on what is general, common to everyone in order to enforce the principle of impartiality through this purely juridical idea of equality. Now, this is precisely what is at stake in the moment of the Hegelian civil society: acknowledging that people have the right to follow their own interest and not only the common good, so that the system of needs has to be efficient and to develop freely, but also allowing people's subjectivity to express effectively, that is to say acknowledging particularity.

Axel Honneth (1992) developed a theory of recognition that somehow joins this idea: through the elaboration of a model of recognition that includes three distinct social spheres, he suggests the necessity of a sphere that overcomes the one of law, saying that modern law which acknowledges the universal qualities of human beings, differs from the social type of recognition that must target their personal specificities and requires a medium which considers subjects' distinctiveness in a universal manner, that is "intersubjectively binding" (Honneth, 1992 [2000], p. 148). After Hegel who stated the relevant place of subjectivity in the public sphere, Honneth asserts the role of institutions, of the State in the acknowledgment of people's subjectivity, claiming that without this social form of recognition, of social esteem, as the dialectical complement of objective recognition, individuals cannot fully complete their beings.

This shows the necessity of both formal equality and acknowledging people's particularities, in a dialectical way. Church (2012) also pointed out that "self-determination happens to be the foundational norm all contemporary democratic theorists take for granted (...). For Hegel, it is crucial for citizens to recognize their own identities and agency expressed in these institutions" (Church, 2012, p. 1037), so that institutions do have a role to play regarding the principle of the particular: as embedded in the social sphere, in the "ethical life", people, as persons or citizens, need also to be acknowledged as subjective beings with their own particularities in order to reach actual freedom.

3.2. Modernity and Subjectivity

It is precisely because we are concerned with the individual in its “modern” dimension that a process of recognition of singularity is to be deployed. As Hegel shows, modern society asserts the right for people to follow their own interest although the Ancient State was based exclusively on the principle of common good and will. The public life was prevalent, and freedom was to be found only in this sphere. Regarding such a conception, the acknowledgement of the persons’ legal status, that is to say the enforcement of formal equality, was sufficient to actualize people’s freedom. However, modernity has brought a new conception of the individual which involves considering, besides his moral nature, his specific context, and even his particular needs, preferences and values: the reason-based argument developed in Chapter 1 involves at the same time this moral equality but also the rational dimension of people, that is their individual will to maximize their own well-being, in accordance with their own specificities. And this is the matter that Hegel starts raising when he develops about the shortcomings of the model of the Ancient State.

Taylor (1979) recalls for instance how Hegel insisted on the fact that the Ancient *polis* cannot serve as a model for the Modern State, notably because of the practical impossibility of a direct democracy, but also because of the categorization of certain people as slaves or strangers that were thus excluded from the community and the participation to public life—so that the *polis* constituted a homogeneous community, that is only based on general equality but in a sense restricted to citizenship that would then exclude some people. The emergence of individualism in modern societies has made differentiation a necessary process for the modern era (Taylor, 1979 [1998], p. 107), and overcame the contradiction of the Ancient meaning of equality that acted as an excluding principle. Then, with the acknowledgement of the human rational nature, subjectivity became a key issue that has been included in political theory: society got a responsibility regarding the satisfaction of all men’s needs, desires and goals (*Ibid.*, p. 112).

Further, Hegel asserts the need for subjectivity to emancipate in society, in order to realize the individuals’ liberty. In the civil society the legal structure of abstract right enables men to follow their particular interest, and thus they will later find the moral conditions to have their own conception of the good. The section concerning

civil society in the *Philosophy of Right*, begins with the claim that the first principle which underlies civil society is the particular and that the second one is the universal:

“The concrete person who, as a *particular* person, as a totality of needs and a mixture of natural necessity and arbitrariness, is his own end, is *one principle* of civil society. But this particular person stands essentially in *relation* [*Beziehung*] to other similar particulars, and their relation is such that each asserts itself and gains satisfaction through the others, and thus at the same time through the exclusive *mediation* of the form of universality, which is *the second principle*” (Hegel, 1820 [2003a], § 182),

so that the dialectics of objective and subjective recognition is central at this moment. The principle of particularity implies that the “concrete person”, as a subject of right, is an end for itself: she follows her own interests, in order to satisfy her own needs and desires. Nevertheless, at this step of the ethical life, being “essentially in relation to other similar particulars” makes her part of a social structure, so open onto the community, the public sphere, that is to say, in relation with the universal where she needs legal, objective recognition. Indeed, this social relationship is seen as mediated “by the form of universality”, that is to say by some figure such as the impartial third party, in order to settle a symmetrical structure between the interrelated subjects, so based on formal equality. The ethical life, in which civil society is included as the second moment, gathers a plurality of individuals who get into relationship with each other through a norm which imposes itself to all. This norm relates to the life of institutions so that it bestows each member of the civil society on rights and duties, and allows them to mutually recognize each other as members of this institution, so that they can effectively exchange and fulfill their needs and desires, within a structure of equality. This structure is however to be emphasized until the point of reaching the one of the State, where, as Honneth also states, the human being is to be recognized as a concrete universal, namely a socialized and unique subject (Honneth, 1992 [2000], p. 36).

However, the particularity of civil society is its contradictory duality—which makes it an unsatisfying moment in Hegel’s system—, as it is based on both the universal and the particular but acting as opposed principles, not yet reconciled: the legal and

institutional aspects are necessary to ensure the efficiency of individual goals and actions, which can be fully expressed here. According to Hegel, civil society is a necessary moment in the political structure which asserts the right to follow one's particular interest in order to complete men's freedom (as they can then act according to their own values and conception of the good, to their own will). This is why he criticizes the model of the Ancient State as missing the step of civil society. Now, this absence is due, as Ege and Walraevens (2011) pointed out, to the Ancients' fear of subjectivity: the civil society, as the moment of the particular interest, is properly related to the "reign of the emancipation of subjectivity that is the realization of individual happiness" (Ege and Walraevens, 2011, p. 236). And according to Hegel,

"The state is the actuality of concrete freedom. But *concrete freedom* requires that personal individuality [*Einzelheit*] and its particular interests should reach their full *development* and gain *recognition of their right* for itself (within the system of family and civil society) (...). The effect of this is that the universal does not attain validity or fulfillment without the interest, knowledge, and volition of the particular, and that individuals do not live as private persons merely for these particular interests without at the same time directing their will to a universal end [*in und für das Allgemeine wollen*] and acting in conscious awareness of this end. The principle of modern states has enormous strength and depth because it allows the principle of subjectivity to attain fulfillment in the *self-sufficient* extreme of personal particularity, while at the same time *bringing it back to substantial unity* and so preserving this unity in the principle of subjectivity itself" (Hegel, 1820 [2003a], § 260).

This State at stake here is the modern one: Hegel explains that the Ancient one rejected the idea according to which effective freedom consists in the principle of a singular individual allowed to be his own particular end. The Greek State thus rejects the "particularity associated to needs": it "has not yet become part of [the realm of] freedom, but is confined to a class of slaves" (*Ibid.*, p. 379). This rejection of particularity is related to the fear that it would lead to the destruction of the State, as the consequence of an "indifference with regard to the principle of the universal", as in particularity would swallow up universality, following which the State only welcomes within itself "the individual dispossessed from any particular determination" (Ege, 2009, p.9), that is to say a legal person, where the State only

provides objective recognition, where only formal equality can be ensured by institutions.

Now, the aim of civil society, as it appears in Hegel's work, is properly to go over this only form of recognition as the ethical life, the life of institutions and so the sphere of justice is based on both the universal and the particular. Going over legal recognition means allowing singularity and subjectivity to take place and be considered in the public sphere. Not only to permit people to follow their own interest but also to provide them with what they need according to their particularities in order to achieve freedom, so that self-development can be fulfilled, and the citizens, in the public sphere (the State) can acknowledge each other not only as citizens but as full persons. Thus, civil society has the role to recognize to people the right to act according to their particular determination, so that the individual can both identify himself as a member of an institution and as a singular person with her own subjectivity. Through the emancipation of subjectivity, the realization of personal happiness becomes possible, according to each person's needs, values, preferences, notably by the acknowledgement of their singularity and their free-will—and here are the premises of what is needed in terms of recognition regarding distribution issues. This is the specificity of civil society as the State is moved by the principle of universal, which tends to deconstruct people's differences in order to recognize their sameness. Ege and Walraevens explain that

In the 'State', the difference is swallowed up by an abstract order which represents the 'whole'. In such an all-encompassing whole the individual is invited to renounce all of his qualities, which constitute his uniqueness compared to others, because the State requires the equality and the similarity of citizens." (Ege and Walraevens, 2011, p. 243)

It is still question here of the legal issue: dealing with generality, the law, constrained by the imperative of impartiality, cannot but provide an objective form of recognition which relies on the principle of formal equality. But the stakes of political organization and of social justice are still dual and must take into account the full dimension of the individual in order to provide the conditions for achieving freedom, that is to say both its universal and particular nature. Civil society is, in Hegel's system, the institution that recognizes and

allows the expression of subjectivity, that acknowledges otherness, so that people are treated equally in the sense that they have a symmetrical power, and their interests matter equally, although they can diverge, and they can use their power differently, according to their own free-will. In his theory of recognition, Honneth also points out the stakes of modernity, mainly asserting that modern individualism instituted the right to particularization [*Besonderung*] (1992 [2000], p. 44), and that individual—or “negative”—liberty is a necessary step towards actual freedom, is a “demand” (*Ibid.*, p. 54).

Further and later, Honneth aims at providing a more modern version of Hegel’s political system by developing the project of a “theory of justice anchored in contemporary social analysis” (Honneth, 2009, p. 171), knowing that

“such a project must be in alignment with of modern theories and conceptions of justice, meaning that it must connect the legitimation of a social just order with the modern hypergood of the individual’s ‘self-determination’ or ‘autonomy’. No modern theory of justice can refrain from grounding its legitimacy in the freedom of the individual or the self-actualization of social individuals. On the other hand, such a theory must also take into account the insight of sociology and social analysis that almost all of the collective real forms of human freedom have social contents and goals that have to be developed and reproduced within the community.” (Honneth, 2009, pp. 171-172)

Thus, the particular dimension of the modern individual that we mentioned becomes a crucial stake for normative theories, and the recognition of people’s subjective dimensions appears as a demand that must stand along with the one of impartiality, that is to say, as a necessary condition of freedom, that must be somehow taken into account by the institutions.

SECTION 4. The Recognition of Subjectivity: A Modern Demand of Justice

I shall explore now more precisely the reasons why the question of recognition is central for social justice and distributive issues. As Sen (2009) shows, what I called formal equality is the fundamental requirement any normative theory must meet as based on the imperative of impartiality (Chapter 2). Now, formal equality involves a specific type of recognition—objective, in the sense that it objectivizes people in order to acknowledge their legal status and so their identical power of participation, their identical moral capacities and the equal concern institutions must have for their own interests. However, even though this legal recognition is necessary for any political structure that seeks fairness, Hegel—who puts forward a similar conception when asserting the necessity of the principle of the universal—suggests that the role of institutions is also to ensure another type of recognition as the modern individual is importantly characterized by his subjectivity which notably encloses self-development and self-determination. Now, if we consider that social justice aims at enabling people to achieve freedom, providing them with the (basic) conditions that are necessary to realize what they tend at, then it appears that it must enforce both types of recognition, objective and of subjectivity. In a more recent perspective, Nancy Fraser (1995; 1996) has well exposed the duality of the issue, namely: is recognition as related to social justice a matter of acknowledging sameness or difference? And this is the point I shall explore first in this last section. Further, she has debated the issue with Honneth (1992; 2010; 2011), who offers a renewed approach of Hegel's social theory. Finally, this idea of recognition of subjectivity will help going back to Amartya Sen's own conception of justice in order to argue that this subjective type of recognition is somehow connected to his capability approach, so that the dialectics of recognition is relevant regarding his own idea of justice.

4.1. Identity versus Difference: Recognition and Redistribution

A central question of Nancy Fraser's recent works on distributive issues and recognition concerns the dual nature of the problem: "Should we opt for a politics of redistribution that aims to abolish class differentials? Or should we embrace a politics of recognition that seeks to celebrate or deconstruct group differences?" (Fraser, 2003, p. 16). This question is to be situated within the framework of the "age of identity politics" (Fraser, 1996) that involves demands of recognition especially from groups which are regarded as minorities. Thus, the issue of "subjective" recognition, above from being a matter only related to the modern individual, constitutes a wider issue that involves justice at a more general level: the emancipation of subjectivity as a goal of social justice in order to provide the conditions for freedom does not only concern the individual as separate from the community, seeking to realize his own self-interest as it can be interpreted in Hegel's account of civil society, but also any entity that has some specific claim to raise. A particular cultural or ethnic group for example demands the recognition of particularity in order to live according to its own values and make their collective interests considered, while aiming at actual freedom.

Now, the second part of Fraser's question is very significant regarding the dual nature of the recognition issue as related to social justice: shall it tend to "celebrate" or "deconstruct" differences? To celebrate people's or groups' differences precisely involves the recognition of subjectivity (thus implying a differential scheme of distribution, aiming at self-determination by providing basic conditions of life, accordingly to each need), whereas to deconstruct them properly is the idea of formal equality and so of an objective form of recognition as it is question of leaving the person only with its legal essence, undetermined and interchangeable, expressing its very universal character of human moral being within an institutional frame. This idea of deconstructing the particular determinations of people is well expressed in the terms she uses when asking whether we should promote differentiation or *de-differentiation* (Fraser, 1995, p. 74). "De-differentiation" properly relates to the process of objective recognition, as it is question of artificially suspending the differences that characterize each person or group so that we end up with a uniform community of identical selves on the legal plan—a *totality*—which actualizes the principle of impartiality necessary to

settle a fair social structure, with no lord nor bondsman. But again, the process of “differentiation” must intervene elsewhere in order to let people act according to their own needs and desires and thus ensure freedom.

Now, to Nancy Fraser the “politics of recognition” is linked to equal respect (Fraser and Honneth, 2003, p. 7). “Recognition” itself “has become a keyword of our time” and “is proving central to efforts to conceptualize today’s struggle over identity and difference” (*Ibid.*, p. 1). It is a proper modern issue and what is at stake then, is “a difference-friendly world, where assimilation to majority or dominant cultural norms is no longer the price of equal respect” (*Ibid.*, p. 7). Here, the intervention of the impartial third party is crucial to equalize people’s conditions, stopping the violent process of the struggle for recognition, and give them equal opportunities to claim their interests, leading to foresee democratic principles as fair ones. Axel Honneth, who discusses the issue with Nancy Fraser asserts that “under the conditions of modern societies, every conceptions of justice must have an egalitarian character from the start, in the sense that all members of society regard one another as having equal rights and each is therefore accorded equal autonomy” (*Ibid.*, p.176), and this is precisely the point of objective recognition: acknowledging the basic moral capacities of all subjects, meaning they can develop their own conception of the good, and even enter a process of mutual recognition. The same idea is present in Hegel’s political theory through the concepts of law and contract which tend to objectivize people’s spirit in their social relationships, but also in Sen’s conception of justice, especially when he asks “Why equality?” (Sen, 1980; 1992) and shows that impartiality leads to assert some form of general equality as the basis of every normative theory (Sen, 2009).

However, Honneth recalls that “from Hegel we learn, above all, that modernity’s promise of freedom demands that we help individuals in all their legitimate freedoms to exercise their rights in the social order” (Honneth, 2011 [2015], p. 198). Indeed, as *formal* equality is only a condition for *formal* freedom, there is also a demand for group and individual specificities, notably in the cultural domain, to express and develop freely. Still after Hegel, Honneth claims that “no modern theory of justice can refrain from grounding its legitimacy in the freedom of the individual or the self-actualization of social individuals” (*Ibid.*, pp. 171-172), and this properly targets the dialectics of objective and subjective recognition, of equality and difference, so that they appear as two interdependent conditions of

freedom, towards the realization of *real* freedom. Now, Fraser advances that “theoretically, the task is to devise a two-dimensional conception of justice that can accommodate both defensible claims for social equality and defensible claims for the recognition of difference” (Fraser, 1996, p. 9), knowing “social equality” can be considered as referring here to the one we designate by “formal equality” as it seeks to establish symmetry in social relationships, objectivizing them. She considers equality must be acknowledged in the field of politics of redistribution whereas recognition shall take care of acknowledging difference, thus assuming redistribution and recognition are two separate fields: “I assume that justice today requires *both* redistribution *and* recognition” (Fraser, 1995, p. 69). She indeed proposes an “*analytical* distinction” (Fraser, 1997, p. 15), according to which the politics of redistribution and the one of recognition “assume different conceptions of justice” (Fraser, 1996, p. 6), “propose different sorts of remedies for injustice” (*Ibid.*, p. 7), “assume different conceptions of the collectivities who suffer injustice” (*Ibid.*, p. 8), and “different understandings of group differences” (*Ibid.*, p. 9). She thus claims it is question of the “redistribution-recognition dilemma”, separating socio-economic injustice, “rooted in the political-economic structure of society” (Fraser, 1997, p. 13) with exploitation, economic marginalization and deprivation as examples, from the cultural or symbolic injustice, “rooted in social patterns of representations, interpretation and communication” (*Ibid.*, p. 14), with cultural domination, non recognition and disrespect as examples. And even though she asserts the deep interdependent nature of both of them, considering that they are “in practice intertwined” (*Ibid.*, p. 15), and that this distinction is only “analytical”, I would rather conceive the issue as being overlapping: recognition is the starting point of redistribution as we saw that formal equality is the fundamental requirement of any normative theory that seeks to establish a fair social structure, so that a fair system of recognition (objective, institutional) should ensure the minimum conditions for fair distribution (on the subjective—or particular—perspective). And this is the idea Honneth defends while discussing the issue with Fraser: he rather sees distribution as a “derivative” of recognition, as a “subvariety of the struggle for recognition”, which even leads him to conceive a “normative monism” of recognition, considering it constitutes the “fundamental, overarching moral category”, so that distribution should even be subsumed under it (Fraser and Honneth, 2003, p.2-3).

Yar (2001) also questioned Fraser's dualistic model and more specifically its "overly narrow 'culturalist' understanding of recognition" (Yar, 2001, p. 289), that "cannot encompass redistributive claims" (p. 296). He sees claims about redistribution as inherent to the struggle for recognition, just as what this chapter defends: asking to be entitled to more material resources for instance is directly related to asking to be acknowledged in our particularities (gender, handicap, race, etc. are as many parameters that enter the "culturalist" or "symbolical" view of Fraser but which engage different needs in terms of distribution). Indeed, the harms generated by "cultural" or "symbolic" injustices, as she calls them, usually generate deficiencies in terms of material resources, involving unfair inequalities at the redistributive level and not only in the field of recognition: "redistributive claims, *as moral claims upon others invoking the terms of justice and injustice*, irredeemably have the character of recognition claims" (*Ibid.*, p.295). Thus regarding the question "Does justice require the recognition of what is distinctive about individuals or groups, over and above the recognition of our common humanity?" (Fraser, 1996, p. 32), the answer shall be yes, considering the imbrication of formal equality and the recognition of subjectivity. The recognition of our common humanity which settles objective recognition (as it acknowledges our equal moral capacities) is something necessary but which must be completed by the recognition of singularity—which refers to both the recognition and redistribution fields—allowing the emancipation of subjectivity, which implies for the institutions to provide people with the means they need accordingly to their specific circumstances, and this idea, I argue, is to be connected to Amartya Sen's capability approach.

4.2. Back to Sen: Recognition of Subjectivity, the Capability Approach, and Democracy

One of Sen's goals with the elaboration of his capability approach was to express human diversity, notably in terms of needs, preferences and culture, and to insist on the actual capacity people have to realize their goals with their resources, which differ from one individual to another. Thus, legal or objective recognition, that provides people with an equal power of participation in the social life but only

formally, appears as not sufficient to let them realize what they want as different persons may have different possibilities, lower or stronger capacities to use it in a concrete way. Institutions must then take into account their *real* opportunities, in order to target *real* freedom, and objective recognition, although being a necessary condition, is not sufficient to do so. Capabilities thus “reflect the actual freedom that people respectively enjoy in being able to live the kind of lives they have reasons to value” (Sen, 1990, p. 460), so that it echoes to the idea of subjective recognition in that it suggests institutions must acknowledge the specificities of groups and people in order to ensure them the specific conditions they need for that possibility, “*respectively*”.

The dialectics of objective and subjective recognition then appears relevant regarding Sen’s own conception of social justice: the principle of formal equality is fundamental as he asserts himself the necessity for any normative theory to meet the requirement of impartiality, in that it is inherent to the concept of justice itself, but this is only the basic, starting point of justice. Equal consideration, which is enforced by the process of objective recognition, need to be completed by a process of differentiation which aims at “reconstructing” people’s specificities in order to allow self-determination according to what they have reason to value but also to their actual opportunities to realize it. And the concept of capabilities suggests that the institutions have a role to play in providing them with the conditions to do so. Indeed, acknowledging people’s particularities implies to treat people according to what they are able to realize and thus involves a specific scheme of distribution, regarding their actual possibility to convert their resources into “functionings”, that is to say into actual achievements: functionings represent “a realization of the person: what she manages to do or to be” (Sen, 1985, p. 10)—so that recognition clearly appears as a matter for distribution. Thus, we have here a conception that targets *real* freedom, notably by taking into consideration the dimension of possibility, of choice that people really have, so that the subjective parameter is also present. Indeed, recognition of subjectivity, at the scale of institutions does not deal with the acknowledgment of people’s individual subjectivity as related to their personal emotions for instance, but with their specificities in terms of needs, values and preferences, which thus include their capacities of choice, their real opportunities.

Now, the main political disposition that Sen defends as one relevant condition of real freedom is democracy. He defines it as the “government by discussion” (Sen, 2009, p. 324), the expression of “public reasoning”: it is central in his thought and appears as the political structure which would be able to welcome the dialectics of objective and subjective recognition. Indeed, it supposes a strict equal power of participation, so in terms of basic political rights, which involves formal liberty as induced by the enforcement of legal or formal equality, but it aims at allowing people to express their voice and assert their interests and rights, so that the determined principles of justice can constantly be revised and improved. In that, it relies on the recognition of subjectivity too as it represents the public place where subjectivity can emancipate and be taken into consideration, so that it becomes effective according to Hegel’s idea that institutions are the necessary intermediary to actualize and make people’s actions effective.

Further, in his article “Democracy as a Universal Value” (1999), Sen insists on the fact that providing people with formal rights, such as the right to vote, is not sufficient to create a real democratic structure⁵¹; the conditions needed to exercise them effectively must also be generated. He thus defines the three essential functions that democracy shall fulfill: intrinsic, instrumental and constructive. The intrinsic value refers to political freedom as “a part of human freedom in general, and exercising civil and political rights is a crucial part of good lives of individuals as social beings” (Sen, 1999, p. 10)—this intrinsic dimension recalls the basic formal dimension needed to live and develop oneself as a human being. The instrumental value, as Sen explains, refers to giving people the capacity to make claims and thus get their interests considered: democracy should allow “enhancing the hearing that people get in expressing and supporting their claims to political attention (including claims of economic needs)” (*Ibid.*) so that we get to the subjective dimension of recognition while considering redistributive issues.

Finally, the constructive function of democracy, greatly connected to the idea of public discussion in a framework of open impartiality, refers to the collective dimension necessary for the process of deliberation (*Ibid.*). This process thus appears as a dialectical method that shall result into enlightened and reasonable

⁵¹ At this stage, he is mainly criticizing the rule of majority as the essential characteristic of democracy: “Democracy is a demanding system, and not just a mechanical condition (like majority rule) taken in isolation” (Sen, 1999, p. 9-10).

decisions—that is, providing the conditions of freedom through the interaction of the universal and the particular, of objective and “subjective” recognition.

Finally, democracy appears as putting forward the possibility of mutual recognition, that is, going over Kojève’s conception. Indeed, although objective recognition enforces formal equality—so a symmetrical structure of social relationships, but only artificially and from outside through the mediation of an institutional third party to overcome the impossibility of reciprocity at that moment of the struggle for recognition—democratic dispositions enable people to mutually recognize each other, especially, in Sen’s theory, through the efforts of creating the conditions of *real* deliberation among the citizens.

This also appears to be one central point in Honneth’s social theory, especially comparing to Kojève’s reading of Hegel. Indeed, while Kojève seemed to reject the possibility of mutual recognition⁵², Honneth characterizes it as the condition of individual self-development, especially regarding post-modern societies: mutual recognition completes his model of liberty that comes to an end with social liberty in the “democratic formation of the collective will” (Honneth, 2011 [2015], p. 185). Intersubjective recognition thus becomes possible and is necessary in the sense that it contributes to self-recognition: people can consider themselves as right bearers and juridical persons only if they do acknowledge others as such, as Honneth puts it (Honneth, 1992 [2000], p. 132). Moreover, mutual recognition, at the time of post-modern right, involves the recognition of the subject’s moral faculty, of his autonomy, but also of his concrete dispositions that are required to make use of this faculty (*Ibid.*, p. 143). Thus, issues of distribution clearly appear as included in the field of recognition as it is here question of determining what kind of basic needs must be completed to ensure people’s ability to actualize their freedom: Honneth explains that right includes new material contents that take more into account individuals’ differences in terms of luck opportunities that allow actualizing socially ensured liberties (*Ibid.*, p. 144). And this again calls to mind Sen’s capability approach in that the question of considering people’s own circumstances and capacity of choice is at stake.

Relying on Honneth’s works, some evidence of the relevance of Hegel’s political theory regarding Sen’s conception of justice can be found, notably when looking at

⁵² See footnote 49.

the importance of institutions. Indeed, although Hegel was not favouring democracy as the best system, he still defended social institutions as the condition of people's actions effectivity⁵³. Now, the point of Honneth is to “demonstrate the current relevance of *The Philosophy of Right* by proving that it can be understood as a draft of a normative theory of those spheres of reciprocal recognition that must be preserved intact because they constitute the moral identity of modern societies” (Honneth, 2010, p. 5), showing that the central role of institutions is to ensure recognition. Indeed, “Hegel retained the idea intact that the freedom of individuals is finally only implemented in that space where they can participate in institutions whose normative practices assure a relationship of mutual recognition” (Honneth, 2011 [2015], p.181): just as Sen looks for the optimal conditions of fair participation in the public life, with a specific importance given to public debate, and as Anderson aims at a structure of non-domination through democratic equality, it was crucial for Hegel to develop a system that would take properly into account the right dispositions of the ethical sphere, without which freedom could not be achieved. “Hegel can conclude that individuals only really experience and realize freedom if they participate in social institutions that are formed by mutual recognition relationships” (*Ibid.*, p. 185): indeed, only such institutions can provide the conditions for actual social recognition, that is to say the spirit must go through the prism of objectivity.

Formal equality, which engage objective recognition, is founded on the demand for impartiality—that is asserted by Sen as a necessary principle of justice (in the sense of something which cannot not be)—which relates to the principle of the universal. But justice is then to be refined: “universality of inclusion”, or equality of treatment involves considering *each* interest with the same level of attention, meaning the arrival of particularity. Sen's conception of justice is thus engaged in this dialectical movement which goes from objective to “subjective” recognition, the latter including distributive claims, and this is probably why he gives so much importance to the “Equality of what?” question. Here again, we find this characteristic tension that involves the principles of the universal and the particular in the heart of the concept of equality.

⁵³ Especially in the moment of morality, that precedes the ethical life, where he explains how, at this stage, the principle of an action being the subjective will, without any institutional mediation, then the action cannot be complete (Hegel, 1820 [2003], §107-118).

SECTION 5. Concluding remarks

From the assertion of general, or formal equality being the fundamental principle of every contemporary normative theory we derived the idea of objective recognition, that mainly targets and categorizes the formal dispositions, that are, although insufficient, necessary to provide the basic conditions of actual freedom, regarding the state of modernity. Indeed, from the reason- and impartiality-based arguments detailed in Chapters 1 and 2, there results the demand for the acknowledgment of a strict identity between people at some level (here determined as the legal sphere, in which subjectivity is suspended), that ends up forming, following Hegel's vocabulary, a "totality".

Eventually, formal equality tends to establish a broad an abstract frame of non-discrimination which implies "seeing people as equals", that is to say applying equal treatment or equal consideration. Now, to be properly enforced, impartiality needs to be settled by some form of mediation between the involved parties which are to be recognized as equals. This is where the third party, "impartial and disinterested" in Kojève's terms, shall intervene, in order to objectivize the intersubjective relation which cannot end in a satisfactory outcome of effective recognition under the only action of the private parties, confined in their own natural determination and interest, in the immediacy of their being and infinity of their will that can alienate all things. The institutional mediation offered by the third party or the institution thus objectivizes the interactions of people, who thus become interchangeable as it operates a negation, or suspension, of their subjectivity, so that they are acknowledged as legal persons, strictly equal on the social plan: the social relation is then characterized by symmetry, which solves the contradictions involved by the dialectics of the lord and the bondsman.

This process is what we called "objective recognition" and is a necessary condition for justice. However, we saw that this form of recognition does not constitute a sufficient condition, notably as regarding the characteristics of the modern individual which demand for acknowledging singularity. Now, what Hegel settles as the principle of the civil society is precisely this duality between the universal and the particular, the objective and the subjective. And this duality, which operates as dialectical, is to be connected to the back and forth movement between

the notions of identity (in the sense of sameness) and difference, to the processes of “de-differentiation” and differentiation, according to Fraser’s terms (1995). In the civil society, one relates to the other on the mode of difference, while the State promotes the status of citizen, so as one relates to the Other on the mode of sameness as citizenship involves an equality in terms of rights and duties. The recognition of subjectivity, and thus the importance of civil society, is thus asserted as necessary for two main reasons: people have the right to follow their own interest and to choose for themselves the kind of life they have reason to value, and institutions must take into consideration their differences in terms of opportunity to realize it and so to actualize freedom, which directly echoes to Amartya Sen’s capability approach. In that sense, the dialectics of objective and “subjective” recognition refers to the dual nature of the concept of equality which is put forward by Sen in his conception of justice, when he distinguishes the two fundamental questions, “Equality of what?” and “Why equality?”, also somehow based on this dialectic of the universal and the particular as we already mentioned. The reason- and impartiality-based arguments for justifying the egalitarian paradigm shall then lead us to consider more deeply the self-determination requirement as part of actual freedom as the object of justice.

Finally, this back and forth movement between identity and difference seems perpetual so that the dialectics of the universal and the particular is probably never to be exceeded: this tension, more than a duality, that characterizes the question of social justice and political theory in general may be something crucial that needs to stay balanced, and this appears to be the suggestion of Emmanuel Levinas, through its criticism of Totality.

CHAPTER 4

Equality and Alterity: From Political to Ethical Justice in E. Levinas'

Although general equality appears fundamental regarding social justice theories, the previous chapter allowed foreseeing its limits, although it is certainly necessary. This last chapter is also an investigation through the potential flaws of the egalitarian norm, thus still arguing in favour of maintaining the previously mentioned tension, but at the same time it raises a new possible argument for the necessity of equality. It focuses on Emmanuel Levinas' conception of justice as based on his original account of the being, which suggests that the "responsibility for the Other" is the principle of individual subjectivity and freedom. The specific concepts of the "self", or the "same", and the "Other", prove to be crucial regarding political issues and their analysis leads to understand the notion of justice according to two different views in Levinas'. I argue that the "same" involves a political idea of justice, based on the principle of equality, whereas the "Other" refers to an "ethical" form of justice that involves inequality. The chapter thus aims at shedding light on Levinas' conception of justice which is rather scattered in his works and essentially revealed through the critique of institutional justice he undertakes, as a "tyranny of totality". Now, this type of justice, and modern theories in general, are based on the demand for equality, but Levinas precisely calls into question this principle of equality: it denies, according to him, the true essence of the being, whose freedom must be found in heteronomy.

SECTION 1. Introduction

To summarize what has been said before, modern theories of justice are generally based on an imperative of equality whose necessity is usually justified as being the condition of impartiality (Sen, 2009). Thus, a large number of social justice theories includes nowadays an egalitarian perspective, as seeking for the right “space” of equality (Sen, 1980; 1992), but assuming at the same time the necessity of a general frame of equality, notably regarding the moral and political faculties of people considered as citizens. The promotion and justification of this norm of equality appears explicitly since Rawls (1971) who puts impartiality as the necessary condition of possibility of justice, so that it appears as an asserted principle of justice for modern normative theories. Even Sen (2009) showed that those who reject equality as an object of justice still rely on it as a basic imperative of justice that ensures at least non-discrimination within the frame of the considered society and theory. This frame sometimes involves the notion of universalism, or even of “totality” as Hegel (1820) believes. Indeed, this view is mainly based on the modern conception of the being that has enhanced individualism in the sense that the particular will has been acknowledged the right to self-determination and Hegel values a conception according to which the spirit gets freedom when fulfilling its own totality.

However, this kind of egalitarian conception has been the target of some philosophical analysis, and notably the one of Levinas, who did not seem to agree with the mentioned arguments for justifying the necessity of equality and rather criticized it, as related to, precisely, a “totalitarian” conception of social life. Indeed, he refuses the foundations of what he calls “Western philosophy” and so of the tradition of modern political theory⁵⁴ that considers, according to him, the being as an ego enclosed on itself: he asserts that subjectivity and freedom is not about the self but the Other, that subjectivity and freedom are really born in the encounter

⁵⁴ Levinas uses the very large and ambiguous term “Western philosophy” to refer to a system of thought based on a conception of the being as enclosed in a relation to sameness. He strongly criticizes this vision and includes the modern tradition of political theory in it, starting with Thomas Hobbes, and then Heidegger’s ontology. Some authors have nevertheless showed that his conception of Heidegger’s work is sometimes misguided (for instance Raffoul, 2005) and we also call to vigilance regarding his lack of precision about which authors he includes under the vast term of “Western Philosophy”, especially when speaking of the contractarian tradition.

with the Other, offering a reversal in the structure of the being's subjectivity, that calls into question the traditional modern conceptions of the being and of justice.

1.1. An Outline

The work of Emmanuel Levinas indeed provides an original conception of the being in that the principle of its subjectivity and freedom lies in its relationship with the Other: it is in this "ethical" relationship that the "primary truth" can be found. Now, the ethical relationship, in the sense of Levinas, has a specific meaning in that it is based on the "responsibility for the other", from which the subject cannot escape. This responsibility arises from an encounter, with the Other, who manifests itself through his "face". "The access to the face is straightaway ethical" (Levinas, 1982, p. 79), so that the structure of subjectivity of the "Ego" gets reversed and here lies the main originality of Levinas' thought: before the Other, I am no longer a self dominated by my own will, but my essence is *commanded* by the responsibility I hold toward this Other, and this determines the conditions of my liberty, as freed from the closure of the ego who alienates everything by identifying it to its essence. According to Levinas, subjectivity is "initially for an other" (*Ibid.*, p. 93): the responsibility for the Other is the "essential, primary, fundamental structure of subjectivity" (*Ibid.*, p. 91). We then rapidly understand how much this conception takes the opposite view of the modern theories investigated so far.

The notion of Ego also appears under the term of "same" in Levinas' and refers to a process of self-identification where the being only reports to itself: the will exists in itself and for itself and thus represents a "Totality", determining a being enclosed on itself, "allergic" to alterity. However, the key notion in Levinas' thought is the one of Other, as a presence which is absolutely exterior to the Ego, impossible to alienate. The Other relies on transcendence and invokes the idea of "Infinity" as opposed to totality: it prevents the ego from completing its totality, as it resists any process of identification by a particular will. It involves a relationship based on asymmetry—the ethical relationship—and defines the moment of the for-the-other. Now according to Levinas, the encounter with the face of the Other is what reveals the truth of the being and is thus the foundation of justice, as the

justification of his right to be. This conception of justice is to be understood in an “ethical” perspective, that is to say, a form of justice which is not institutional.

Considering that the true essence and freedom of the being is to be actualized through this ethical form of justice, Levinas undertakes a critique of institutional justice, that he qualifies of “impersonal” and says that it carries in itself a “tyranny”—the one of Totality, as related to “universal rules”. The scheme he implicitly designs corresponds to a structure of strict equality which negates the responsibility for the Other (through which only the being can be truly free) as it prevents social relationships from being asymmetrical, and is thus based on the conception of the being as an Ego. Nevertheless, his critique, from *Totality and Infinity* (1961) to *Otherwise than Being* (1974) will move towards the acknowledgement of the necessity of this form of justice, of a political device that allows equality in social relationships, so that we eventually find some form of justification of the norm of equality even in Levinas’ works. One difficulty with Levinas’ thought is that it relies on many concepts of his own, sometimes convoluted but whose clarification and understanding are necessary in that they take part in the reasoning leading to his approach of justice—which is precisely based on his conception of the being that involves specific concepts such as Totality, Infinity or else the Responsibility for the Other.

The aim of this chapter is two folded: first, it tends to shed light on Levinas’ political theory which is rather implicit and scattered throughout his writings, by showing its two-dimensional aspect as based on his dialectics of the same and the Other, so that we get two sides of justice—political and ethical. Second, this issue is to be integrated within the one of the justification of equality ruling modern theories of justice: Levinas first seems to reject equality and with it political justice which is based, according to him, on the totality of the Ego, in favor of the principle of alterity, the ethical principle which founds ethical justice—so that Levinas seems to plead for inequality as the condition of freedom. Nevertheless, in his later works, Levinas admits the utility and even the necessity of equality, so that this inquiry into his political thought provides elements to both, calling into question this norm of equality as the condition of justice, and justifying it.

1.2. Some Inputs

The idea of a two-dimensional conception of justice in Levinas has already been suggested, mainly separating the political/ontological from the metaphysical/ethical aspects (Thomas, 2004, p. XV). However, our investigation seeks to specifically shed light on the principles involved in each perspective, namely equality (based on sameness) and inequality (based on alterity) and their justification. Levinas' "political theory"⁵⁵ has also been the target of some studies, notably through the examination of his critique of the tyranny of totality and of the liberal individualism paradigm of "Western philosophy" (Kyongsuk Min, 1998; Kirkpatrick, 2011). We tend to further these analyses in order to include them within a larger reflection that integrates a focus on the notion of equality and its role regarding the conditions of possibility of justice. The question of impartiality is nearly absent from Levinas' work (or as for being criticized as the realm of impersonal reason), so that the justification of equality is to be found this time in the nature of the being, which is torn, in Levinas', between absolute sameness through identification and strict inequality in the relation with the Other. We will thus follow Kirkpatrick (2011) who raises the "practical" justification: "Given that (for Levinas at least) we are responsible for *each other* law is necessary in practical matters: we need some form of 'comparison', some 'order' in our coexistence" (Kirkpatrick, 2011, p. 225). Here, the law refers to the demand for general equality and its formal nature that is being called into question by Levinas: the issue then is somehow the one of the practical feasibility, or functionality of the infinite responsibility for the other, in the social and political spheres. This question has notably been asked by Derrida (1967), Habermas (1990) and Rose (1992).

The question at stake is then to determine what this relation between the Same and the Other involves, notably in terms of freedom, recognition and justice, in Levinas', following the issue of the tension between equality and inequality, the universal and the particular, the objective and the subjective, that characterizes modern social justice theories. First, the analysis of the duality of the same and the

⁵⁵ The term of "theory" might seem misused in that Levinas' political thought appears more as political considerations than as a structured theory. However, we argue that put together, these considerations form an argumentation about the conditions of possibility of justice that we aim at clarifying.

Other shows the movement of subjectivity in the being, from the moment of the for-itself towards the for-the-Other. Second, the idea of responsibility for the Other appears as the foundation of subjectivity and freedom, revealing the principles of ethical justice. Finally, Levinas' critique of the "tyranny" of totality is what allows understanding his implicit conception of political justice, based on a principle of equality: the justification of this norm is here called into question but finally acknowledged as necessary for practical reasons.

SECTION 2. From the Same to the Other

This section aims at precisizing the nature of these central concepts in Levinas' thought as they constitute the basis of his two-dimensional conception of justice. First, the ego, or the same, is in Levinas' a being that is completely enclosed on itself, so that it refers to totality and admits equality as its principle. Second, the Other, that refers to infinity and involves a structure of inequality, appears as absolute exteriority and as the new point of view philosophy should take to understand subjectivity and freedom, as it is the encounter with the Other that frees the self.

2.1. The Ego or the Same

The ego refers to the concept of identity as sameness and to a constant process of identification: its essence lies in the will that can alienate all things to itself, thus generating a unified being, a totality—a “same”. It appears as a negative modality of being in Levinas', which cannot meet the conditions of true liberty, as determined as a will enclosed on itself: “the freedom that establishes itself in the same ends up prisoner of the same” (Levinas, 1994, p. 62). As exclusively particular, the ego's will recall the nature of the person as described by G.W.F. Hegel in his *Elements of the Philosophy of right* (1820)⁵⁶, in the moment of the civil society, moment of the for-itself and in-itself, which describes the subject as determined by the will to follow his own interest, the will that tends to itself. The agent can there appropriate things that are exterior to himself. And as a “person”, he is a subject of rights, free, whose will is first immediately infinite—spontaneously, as empty—and can thus particularize itself in all things, as it is firstly pure indeterminacy (Hegel, 1820 [2003b], p. 153-154). This type of freedom is thus limited to the only free-will: it is the power of the will to choose between all of its possibilities. This way, the object of right in the moment of property in Hegel's, is the realization of the liberty of the abstract will in general, of a singular person who only reports to herself (*Ibid.*). The

⁵⁶ Hegel has a specific place in Levinas' work: although barely quoted, his conception of social life and the “Hegelian totality” is targeted by Levinas. See for instance Rey (2006), Simhon (2006) and Balbontin-Gallo (2015).

will then exists in itself and for itself, and produces itself in sight of itself, whereas the thing has a substance only in sight of something else. And by appropriating a thing, the individual gives it his own will as determination and essence, thus identifying it to himself and producing a unified totality. However, in Hegel's, the for-itself refers to one specific step of the ethical life, to a step of emancipation for the spirit, whereas in Levinas', the modality of being of the ego ends up in solitude, as related to "the dogmatism and the spontaneity of the same" (Derrida, 1964, p. 343).

Indeed, for Levinas, this mode of being as identification, as a process of alienation of things that is obstruction of the being with a surplus of materiality, negates liberty: the relation of identification is the overload of the ego by the self, the interest that the ego has for itself, or the materiality (Levinas, 1983, p. 51). That is how Levinas comes to describe this mode of being as a *Totality*: "The individuality of the ego is distinguished from any given individuality by the fact that its identity is not constituted by what distinguishes it from others, but by its self-reference" (Levinas, 1987a, p.28). Now totality is opposed to the idea of infinity in Levinas', which designates exteriority, what is fundamentally other, different from the ego. The consistence of the ego's being lies in its "essence" which "rubs off on as an invincible persistence in the essence, filling any interval of void which would come and interrupt its exercise" (Levinas, 1978, p. 15). Levinas adds that "the essence is *intéressement*" (*Ibid.*), and as an "invincible persistence" of persevering in its own being, the ego seems to have war as its only way out, in that it does not have any possibility of return on itself, regarding its inability to open onto exteriority. It thus tends only towards the realization of his own will, of his self-interest, that is achieved in the exercise of its right on anything—in Hegel's sense of the person. Now, as this totality finds its consistence in *intéressement*, it is egoism, and every ego being determined as such, it gets into conflict with every other. This is how "the *intéressement* of the being dramatizes in the egoisms in struggle with one another, all against all, in the multiplicity of allergic egoisms which are at war against each other, and thus, together" (*Ibid.*).

The nature of the ego refers to a war of all against all, recalling the Hobbesian state of nature (Hobbes, 1651). Indeed, as "allergic" to exteriority, the ego repels the other ceaselessly, seeing it as an opponent, as the incarnation of the limitation of his essence's sovereignty. Now, Hobbes, starting from this rational fiction of the

state of nature in which man is a wolf for man, determines the conditions of peace as a reciprocal limitation of this total being, in the sense of a negative freedom which involves the absence of obstacles in the realization of self-interest. Levinas makes several references to Hobbes' thought, especially as embodying the core of what he calls modern "Western philosophy" that conceives the being, but also social issues, under the paradigm of totality—that is, reason is the principle of social life so that social justice is ruled by "universal" and "impersonal" laws that negate the uniqueness of people: what we defined as general equality in the previous chapter. This "tyranny of totality", which characterizes modern political theory according to Levinas is what he tends to reverse, by inverting the sense of subjectivity through the introduction of exteriority and transcendence in the subject's nature. Indeed, his conception is at the opposite of Hobbes' one: the justification of society, of institutionalized politics is precisely to be found in the need for limiting, not the will's arbitrary and infinite power, but the infinite responsibility one has initially towards the Other.

2.2. The Other: The Encounter

There is a presence which is absolutely exterior from the ego, that the same cannot identify to him and alienate—the one of the Other, which determines pure alterity: human alterity, is not thought from the purely formal and logical alterity by which the terms of a multiplicity are distinguished, as Levinas puts it (Levinas, 1978, p. 14). Alterity is to be found beyond the simple distinction that is made between several individualities, it is the very exteriority, exteriority in itself. The "alterity of the Other", "is not a particular case—a sort—of alterity, but its original ex-ception" (Levinas, 1978, p. 279): it is transcendence, the Infinite, so that the ego cannot, in any way, grasp, appropriate or study the Other as if it were its object.

The Other then appears as what prevents the ego from completing its totality: it disrupts its mode of being and inverts the structure of its subjectivity which was then determined only as a particular will tending to itself. As fundamentally exterior, transcendental, the Other is the one that the ego cannot reduce to itself, to its own identity. It cannot include it in its totality as it resists the process of

identification: the Other cannot be the ego's object as "the alterity of the Other is not determined, not grasped nor comprehended, by the I; alterity weighs on the I with the force, the disturbance, of its passing, its infinite and unrepresentable withdrawal" (Levinas, 1987a, p. XIX). Now, the ego comes in relation with the Other through a specific event: the encounter, through the Other's *face*, that settles the "ethical relationship". This encounter provokes a distance between the ego and the same, as the Other imposes itself as a necessity, a demand in front of which the ego cannot retreat and which comes limiting its arbitrary and spontaneous liberty.

The "face" is central in Levinas' ethics: it is through the face that the reversion of subjectivity happens, as it is through it that the Other commands the ego and calls him to his responsibility. Indeed, as the Other is not merely another juxtaposed ego—who would thus be the same—the encounter reveals Alterity, breaking the totality, thus opening the structure of social life. As ethical, the Other's face is *meaning*; it is speech, ordering its duty to the ego. Thus, whereas the ego is the uncontested sovereign in its relation to the same, to what he can alienate by identification, when meeting the Other, the face as the expression of alterity, its vulnerability becomes the master. The meaning of the face is commandment, and its first word asserts the interdiction of murder (Levinas, 1963, p. 22).

Whereas the Ego is the emblematic figure of the moment of the for-itself, the Other introduces exteriority as a principle in the subject's mode of being, which is then determined by the moment of the for-the-other—the authentic modality of the being in Levinas'. This is why what he refuses to call ontology is for him an ethics: it is not the Ego, as identity, as the same, who is the basis of the being's truth, but the Other, from the responsibility he orders to the subject. This encounter with exteriority, the *ethical relationship*,

"consists in approaching an absolutely exterior being. The infinity of this being, which one cannot therefore contain, guarantees and constitutes this exteriority. It is not equivalent to the distance between a subject and an object. (...) The exteriority of the infinite being is manifested in the absolute resistance which by its apparition, its epiphany, it opposes to all my powers" (Levinas, 1987a, p. 54-55),

so that the Other, from its transcendence, disrupts the structure of the ego's will. Indeed, "transcendence is what faces us. A face breaks up the system" (*Ibid*, p.43), namely the system of totality, the imperial power of the same on all things. However, Levinas argues that it is precisely this interruption of totality that frees the ego:

"The face, the countenance, is the fact that a reality is opposed to me, opposed not its manifestations, but as it were in its way of being, ontologically opposed. It is what resists me by its opposition and not what is opposed to me by its resistance. This means that this opposition is not revealed by its coming up against my freedom; it is an opposition prior to my freedom, which puts my freedom into action. It is not that to which I oppose myself, but what is opposed to me" (*Ibid.*, p. 19).

He thus offers a conception for which freedom is no longer based on an individual conception of the subject and the will, including notions such as autonomy in the traditional sense: "the structure of my freedom is (...) completely reversed" (*Ibid.*, p. 55), that is, freedom is to be found in ethics, and thus starts with the responsibility for the Other. From the "tyranny of totality" of the being which identifies everything to itself, that determines the totality of social life and political justice with a State that identifies all its members to one overall reason, Levinas tends to move towards a social theory that makes room for alterity, that is to say according to him, that makes room for true justice—so that asymmetry is seen as its principle.

SECTION 3. Responsibility for the Other, Freedom and Justice

In this section, we further explore the idea of a reversal in the being's subjectivity through the understanding of Levinas' radical conception of the responsibility for the Other. First, it appears as the principle of freedom: the paradigm of autonomy changes for heteronomy, in that the being becomes truly free only as its will is invested by alterity. Second, this reversal has several implications, notably in terms of recognition: identity and alterity provide categories for understanding Levinas' bivalent conception of justice.

3.1. Responsibility as Freedom: The Reversal of Subjectivity

The principle of responsibility for the Other is asserted as the "essential, primary, fundamental structure of subjectivity" by Levinas. Now, responsibility is according to him responsibility of what is not my fact, or even not my business (Levinas, 1983, p. 91). This responsibility is not the one of the subject regarding the actions that result from his own will, but really the responsibility *for* the Other, so that subjectivity "is not a for-itself; it is, again, initially for another" (*Ibid.*, p. 93). The responsibility for the Other arises from the encounter with the face that reveals the Other's extreme vulnerability, as a commandment. Now, the Other, as pure exteriority–Alterity–then becomes the principle of my will (though not the object), so that the being's principle moves from autonomy to heteronomy in this encounter. Indeed, "the presence of the other–privileged heteronomy–does not collide with freedom but invests it" (Levinas, 1961 [1971], p. 84): as an ego, a same, my will is in a sense empty, as it can alienate all things without restriction, thus defining the reign of spontaneous arbitrariness. Freedom is then meaningless, without content, and Levinas asserts that "freedom is not naked" (*Ibid.*, p. 83): authentic freedom must be "invested" by responsibility so that only the presence of the Other, and the responsibility towards him as its result, dresses freedom up and makes it meaningful.

The Other thus gives the being an ethical content, but without depriving it from its freedom. On the contrary: Levinas suggests that the truth of liberty lies in alterity

when asserting that “the other, absolutely other—*Autrui*—does not limit the freedom of the Same. By calling him to his responsibility, *it establishes and justifies it*. The relation with the other (...) heals the allergy” (*Ibid.*, p. 215). The ethical dimension of alterity brings justice to the being, in the sense of *justification* and thus frees it from the tyranny of totality: we saw how the ego refers to a negative type of freedom as mutual limitation of the arbitrary will, for which “allergy” is an image. This is how freedom lies in heteronomy, in the command of the Other that invests me and that is responsibility.

Levinas goes even further on the idea of heteronomy, considering subjectivity is “sacred in its alterity, regarding which, in an undeniable responsibility, I settle myself with my sovereignty removed. Paradoxically, *it is as alienus—stranger and other—that man is not alienated*” (1978, p. 99, my emphasis): here is the most demonstrative occurrence of the reversal Levinas operates regarding subjectivity. The idea is really to consider the individual from a new point of view, no longer from within himself and his own will and autonomy but from his ethical relation to the Other, to alterity, understanding how one do or should welcome it.

Now, this reversal takes part of Levinas’ critique of the individualistic paradigm of modern Western philosophy, for which autonomy as free will and reason represents the absolute value—as he conceives it—where everything starts from the for-itself. For Moses (2006), Levinas pointing ethics as the absolute priority reveals his critique of autonomy as the original principle of subjectivity (Moses, 2006, p.384). Now, Levinas questioning autonomy refers to his critique of modern political theories⁵⁷ as based on the principle of totality. And establishing alterity, and thus infinity, as the principle of subjectivity and freedom has several implications, notably in terms of recognition regarding society and its principles of organization. Indeed, while criticizing the ego’s nature as a relation to totality, Levinas develops a binary conception which only oscillates between Totality and Infinity, so that it appears radical and involves a fundamentally inegalitarian structure of the being in its relation to the Other: the ethical relationship is asymmetrical and reflects the impossibility for any process of mutual recognition to be effective, as the Other is perceived through his transcendence and commands responsibility:

⁵⁷ Levinas’ criticism of the contractarian tradition is ambiguous in that he only calls into question Thomas Hobbes’ positions, but do not refer explicitly to other authors who could be affiliated to this tradition.

“In the relation with the other, the other appears to me as the one to whom I owe something, for whom I have a responsibility. From there, the asymmetry of the relationship I-you, and the radical inequality between the I and the you, because all relation with the other is a relation with a being towards whom I have obligations” (Levinas, 1995, p.111).

Now, to be effective, recognition needs equality between the parties, as Kojève shows (1981), and as we clarified in the previous chapter⁵⁸: the responsibility for the Other is one-sided, and the donation of oneself that it involves determines a system in which rights and duties are not reciprocal, and which seem to exclude the right to follow one’s own interest, as it refers to the arbitrary and spontaneous freedom of the ego: it only takes form in the selfish realization of the will by and for itself. It then appears that there is a gap between pure identity and radical alterity: the ego and the Other determine two different modalities of being and it seems that they are each to be related to a different social system.

3.2. The Ambiguity of Recognition: From Equality to Inequality

The principle of responsibility for the Other involves a specific, even radical, conception of recognition, which is in Levinas’ torn between the ideas of identity and alterity, and is then completely exclusive of one another. Indeed, on the one hand, the ego which assimilates things in order to identify them to its own being, acknowledges them as identical to itself. On the other hand, the subject who has encountered the Other recognizes him as transcendental, absolutely exterior, and is obliged before his commandment. There is no intermediary form of recognition, between radical sameness and otherness. Subjectivity is deeply linked to the principle of responsibility for the Other, as the ego cannot access the truth of its being without completing his duty towards the Other. This relies on the fact that “the other is in no way another ego, taking part with me in a shared existence” (Levinas, 1983, p. 63). This conception of the Other, as pure exteriority, excludes

⁵⁸ His account of the lord and bondsman dialectics shows how ineffective recognition is when happening in an asymmetrical relationship: it ends with only one being recognized by the other and even the lord receives unauthentic acknowledgment in that the bondsman is not considered as human enough to be able to operate an act of recognition.

the possibility of a symmetrical relationship, of mutual recognition between the same and the Other.

The Other imposes its transcendence onto the Ego's being so that Levinas' conception involves two extreme forms of recognition: one that expresses in terms of equality, in the recognition of identity, and the other one, based on a strict inequality, in the recognition of Alterity, involves a relation without reciprocity. It is then in this sense that the principle of responsibility for the Other implies a form of justice that rejects the principle of equality, although it is established as a norm for modern political theories and it is usually considered as a fundamental demand for any theory of justice considering the reason- and impartiality-based arguments of justification, making equality a necessary condition of justice. But of course, Levinas would reject those arguments, or at least the fact that they could justify a totalitarian political structure, as it is how he considers societies ruled by the egalitarian norm. Indeed, if we look at it well, the reason-based argument is also the principle that establishes the right to follow one's particular interest, to fill or determine one's will with all things—which, negative liberty, or even alienation according to Levinas.

Finally, it seems that we never have in Levinas' the possibility of a double recognition, of both the same and the other, of identity and alterity, that is however to be found in each subject. Justice itself seems missing in the sense that the ego is everywhere dominated by the Other, and that the asymmetry of their relationship prevents equality from raising. More than asymmetry, it is sometimes subordination that characterizes this relationship, and that determines the modalities of recognition, as considered by Levinas. Indeed, "to recognize the other—is to give. But it is giving to the master, to the lord, to the one we approach as a 'thou' [*vous*] in a dimension of height" (Levinas, 1961 [1971], p. 73). Now, this reject of equality in the intersubjective relationship leads us to distinguish justice according to two different perspectives regarding Levinas' conception, although this differentiation is not explicit in his work. The inequality of the ethical, asymmetric relationship actually does determine the conditions of justice, but as "*ethical*", that he separates from the type of justice that we shall call "*political*", as based on the principle of equality and framed by a legal structure, as institutional. Now, it seems that according to Levinas, recognition is properly a political issue:

“The distance that separates happiness and desire, separates politics and religion. Politics tends to reciprocal recognition, that is to say, equality; it ensures happiness. And political law achieves and consecrates the struggle for recognition. Religion is desire and not struggle for recognition” (*Ibid.*, p. 35).

Reciprocity is at the heart of politics and it is in that that ethical justice, based on the relation with alterity, is distinct from institutional justice: if reciprocity were to happen between an ego and an Other, this relation would be the one of an I and sameness, subsumed under totality. Thus, totality is the result of political justice, and that is why Levinas argues in favour of a pure asymmetry in the ethical relationship, as its principle: there is a “radical inequality” between the I and the you, regarding the obligations the ego has towards the other (Levinas, 1995, p. 111). However, equality and reciprocity allow comparison, namely what is needed for political justice. Although Levinas criticizes its totalitarian nature, especially in *Totalité et Infini* (1961), the evolution of his thought makes him later admit, notably in *Autrement qu’être ou au-delà de l’essence* (1974) and *Altérité et transcendance* (1995) some form of necessity of political justice, suggesting that there is a need for passing “from a relation without reciprocity to a relation where, between the members of society, there is a reciprocity, an equality” (Levinas, 1995, p. 112). This sentence is quiet revealing of the fact that Levinas does put the issue of political and social organization on the table, even though he essentially displays it as a critique of totality. It also shows that the justification of political justice and so of equality relies on the need for limiting the infinite responsibility for the Other, that is to say on the nature of ethical justice.

SECTION 4. A Two-Dimensional Approach of Justice

The conception of the being in Levinas' thought is two-dimensional: from the same to the Other, he defines two distinct principles, namely identity and alterity. Now, those principles involve two perspectives of justice: on the one hand the political dimension of justice relies on identity and totality and deals with the social and economic structure of society. On the other hand, the ethical dimension of justice relies on alterity and infinity, aiming at justifying the being and its freedom. In this section, we first tend to clarify Levinas' political conception of justice, notably through the exploration of the critique he makes of it. Second, we deepen the ethical dimension of justice by showing how the two approaches are finally complementary, even in Levinas' thought, regarding the justification of equality.

4.1. Political justice: The Reject and Justification of Equality

Political justice would therefore be the one framed by institutions. It is based on the requirement of equality and thus refers to a system of rights which aims at recognizing the equal nature of the various members of a community as moral subjects. This type of justice allows symmetry in the relationship of the ego and the other, so that equality is guaranteed. However, although Levinas himself puts forward the possibility and even the necessity of such a form of justice, he denounces it as the instrument of Totality. This critique of political theory takes part of a larger problem according to him, which is the ego-focused perspective of "Western philosophy" whose rationality is completely oriented towards the same as a totality and its free arbitrary will:

"That the free will is arbitrary, and that one must leave this elementary stage, is an old certainty of philosophers. But for all of them this arbitrariness refers to a rational foundation, a justification of freedom by itself. The rational foundation of freedom is still preeminence of the same. Moreover, the necessity of justifying the arbitrary is due only to the failure suffered by an arbitrary power. *The very spontaneity of freedom is not into question*—such seems to be the dominant tradition of Western philosophy. Only the limitation of freedom would be tragic or scandalous. (...) In particular, modern political theories since Hobbes deduce the social order

from the legitimacy, the incontestable right, of freedom” (Levinas, 1987a, p. 57)

Levinas’ critique of political justice essentially targets the assertion that the egalitarian law promoted by such a form of justice does not allow to recognize alterity, the fundamental difference between and the exteriority of the subjects, and thus evacuates the responsibility that falls onto each. This way, “politics left to itself, bears a tyranny within itself. It deforms the self and the Other that triggered it, because it judges them according to universal rules”, determining an “impersonal justice” (Levinas, 1971, p. 335): it is impersonal in that it makes all subjects interchangeable, thus negating the principle of alterity—so that equality is contrary to the authentic subject’s nature and cannot achieve liberty according to Levinas’ conception.

Eventually, Levinas questions the totalitarian nature of political justice which aims at encompassing the plurality of distinct subjects under one same unity, targeting specifically Europe as led by a kind of egocentric rationality:

“The problem of Europe and of peace, is precisely the one of the contradiction of our conscience of Europeans. That is the problem of humanity in us (...). Peace from the truth, from the truth of a knowledge for which the diverse, instead of getting opposed, accorded or unified; for which the stranger is assimilated; from which the other gets conciliated with the identity of the identical in each. Peace as the return of the multiple to unity (...). Peace from the State that would gather men who participate to the same ideal truths” (Levinas, 1995, p. 136-137)

The notion of Ego is thus considered to be the basis of modern political thought and through the critique of its structure, it is also a critique of individual liberalism and of the contractarian tradition that appears in Levinas’. He suggests that these philosophies are based on a logic of subsumption, of appropriation and assimilation, as “looking for the whole universe in the self-consciousness” (*Ibid.*, p. 138). Now, political justice establishes equality between subjects of rights, so that they are to be seen as egos in Levinas’ terms. It thus recognizes them as strictly equal, as legal selves, baring them of their subjectivity. But if the content of subjectivity is the responsibility for the Other, in which the truth of the being is to be found, and thus determines its true modality of being as based on exteriority, we

understand why Levinas rejects political justice as the relevant structure for society, in that the State represents “the interiorization of external relations” (Levinas, 1987a, p. 23), encompassing the absolute singularity of each individual under the same totality, thus negating infinity and the responsibility for the Other. This results from the “philosophy of the same” (*Ibid.*, p.50) that Levinas points out as the “Western thought”, from which results a totalitarian way of thinking and social organization according to him.

He moreover states that “autonomy, the philosophy which aims to ensure the freedom, or the identity, of beings, presupposes that freedom itself is sure of its right, is justified without recourse to anything further, is complacent in itself, like Narcissus” (*Ibid.*, p. 49). Now, justification is precisely what the being needs to be free, so that Levinas develops a conception of justice in those terms, as ethical, as based on the responsibility for the Other, the inverted movement of subjectivity. It is question to base justice on the privilege granted to the Other. Then, as soon as “in justice, there is comparison and the other does not have any privilege comparing to me” (Levinas, 1995, p.139), political justice is “limitation” of the responsibility for the Other. Justice, as comparison, negates alterity and thus the responsibility for the Other, so that the ego’s focus is the basis of political theory and seems to tolerate only a negative form of freedom. However, this limitation of the responsibility for the Other also appears as the condition for the organization of social life, so that Levinas eventually acknowledges political justice and equality:

“But in the real world there are many others. When others enter, each of them is external to myself, problems arise. Who is closest to me? Who is the Other? Perhaps something has already occurred between them. We must investigate carefully. Legal justice is required. There is need for a State.” (Levinas, 1989, p. 247)

The issue of the third party there arises: social life counts many Others so that there is a need for mediating all those asymmetrical relations that one has with all others: legal, or political justice is justified by the need for limiting the infinite responsibility, as the condition of possibility of social life then, so that equality is finally required, but in a formal, artificial sense.

Levinas nevertheless still asserts the insufficient nature of political justice: it must be exceeded by another form of justice in that “justice [as political] which is

unavoidable, needs another « authority » than the one of proportions established between wills that are straightaway opposed and opposable” (Levinas, 1987b, p. 168)

4.2. Ethical justice: Exceeding Political Justice

This superior “authority” that must control, in a sense, and disrupt the totality of political justice is ethical justice, in the sense of justification—what gives the being its true meaning and freedom; the “justice of the for-the-other” (Levinas, 1998, p. 108). As justification, ethical justice is associated to the responsibility for the Other, the one that determines the duty of the same towards the Other, and prevents the same from identifying the Other to himself. It thus relies on the social structure of the ethical relationship, that is a relation with absolute alterity, transcendence, so that its principle is inequality and mutual recognition or equality is nowhere to be found.

It is question for the subject to “answer to his right to be, not as related to the abstraction of some anonymous law, to some juridical entity, but in the fear of the for-the-Other” (*Ibid.*, p. 108). One then has to *answer* to his rights, as if they were duties: it is not under the act of a legal reason that people are granted with rights in the ethical sphere but only through the encounter with the face of the Other and the way they hold their responsibility. Thus, we understand ethical justice as the fundamental *demand* for justice, without which institutional justice cannot exist. Levinas indeed suggests that morality is prior to any established social or cultural structure: “Before culture and aesthetics, meaning is situated in the ethical, presupposed by all culture and all meaning. Morality does not belong to culture: it enables one to judge it; it discovers the dimension of height. Height ordains being” (Levinas, 1987a, p. 100). Levinas conceives ethics as being at the roots of any sociality and thus of justice. There seems to be no such thing, no human activity, that can logically preexist ethics, that can have a reality before the encounter with the face of the Other.

Now, although this ethical sense of justice appears as rather metaphysical, it has concrete implications, notably regarding its role towards political justice. Indeed, and this is why we argue in the sense of the complementarity of the ethical and the

political dimensions of justice, “nothing could replace the control of the responsibility of the ‘one for the other’ that determines the limits of the State” (Levinas, 1995, p. 147). There appears a form of mutual limitation: political justice arises from the need for limiting the ethical responsibility, while as based on it, its universal and impersonal rationality must be limited by ethical justice, so that it seems necessary to maintain the tension between the two kinds of justice: ethical justice as the justification of politics and as its safeguard from the tyranny of totality.

Indeed, ethical justice is established as a protection against the tyranny of political justice:

“We must impose commands on ourselves in order to be free. But it must be an exterior command, not simply a rational law, not a categorical imperative, which is defenseless against tyranny; it must be an exterior law, a written law, armed with force against tyranny. Such are commands as the political condition for freedom” (Levinas, 1987a, p.17).

Exteriority is still at the heart of his conception of liberty: there can be no freedom and thus no justice without the encounter with infinity as the ego would then still be enclosed on its own totality and this mode of being refers to tyranny, namely the negation of liberty.

Nevertheless, it does seem, especially regarding Levinas’ resilience towards the practical necessity of political justice, that both principles, equality and alterity, must be considered as coexisting in order to fully understand the nature of the being, who is, in reality, determined by both totality and infinity, as both a for-itself and a for-the-other. Pierre Hayat, in his preface to *Freedom and Command* explains that

“here lies the whole of the tension of the social on which Levinas invites to think: with the necessity of equality around the impersonal law, the value of the ethical relation that we do not reach through reciprocity and symmetry must be acknowledged”. (Hayat, in Levinas, 1994, p. 29)

This tension, between the same and the Other must be maintained to grasp the whole of sociality and of justice, just as justice must stay balanced between the universal and the particular, the objective and the subjective: one can finally easily

justify the necessity of some principle of equality regarding political issues, but it may be harder to foresee all of its implications and limitations, so that when one says a theory of justice shall rely on the conception of the being that is being embraced, it is important to have an exhaustive conception of it, in order to avoid the pitfalls of formalism.

SECTION 5. Concluding remarks

Levinas' conception of the being, and more specifically of ethics as the first philosophy, is the basis of this analysis of his idea of justice. The tension between the same and the Other determines the principles of his social theory: from sameness that leads to equality, to alterity, that leads to inequality, he draws a two-dimensional conception of justice that includes a political perspective on the one side, and an ethical one on the other. Basing on his rather explicit but evolving critique of the former, it appears that he rejects the principle of equality as unfair. But fairness is rather to be understood, in Levinas', as justification, and more specifically as justification of the being, of his right to be and freedom. That is the role of ethical justice, in the responsibility for the Other that involves transcendence—transcendence of the Other that the ego can never alienate—as the ego is rather the Other's *alienus*, so that his being is justified and freed in heteronomy. That reverse in the structure of subjectivity constitutes an original turn in the way of thinking the condition of possibility of freedom, and thus puts equality rather as a device, as a practical means to organize social life, than an end in itself.

This calling into question of the norm of equality thus becomes an interesting point as it leads us back to some issues raised in the first chapter: the instrumental dimension of equality. Indeed, establishing general equality as a fundamental demand and basing its necessity on arguments such as the rational nature of the human being or impartiality as inherent to justice itself, invite to think of it as something that is willed for itself, as an end and not a means. However, as we settled it from the beginning of our argumentation, we follow the contemporary line of thought of many theorists of justice that settle freedom as the object of justice. Then, is equality the means, the instrument of liberty? If it is the case, how to express it? One shall say indeed that equality is the end of some other values, and needs itself means to be achieved; institutional dispositions such as the impartial and disinterested third party for instance.

The practical justification Levinas gives of the necessity of equality for political and social purposes settles it as a means. Now, considering the main and underlying issue of this thesis, that is, the tension that characterizes social justice,

mainly between principles of equality and difference, universal and particular, it would seem wiser not to establish general equality as an end in itself. Again, it appears that it is the distinction we made at the beginning, between general and particular equality that eases answering this question: equality of something can adequately be considered the end, as the goal, of one specific theory, however, and as we already insisted on, general, or prescriptive equality should not be achieved as such (only in a formal way: again, we emphasized the fact that institutions, to perform formal equality, are to *suspend* people's subjectivity, not to negate it once for all).

And it is, I believe, specifically Levinas' theory that is emblematic of the need to preserve this tension, which in the end characterizes human nature, more exhaustively than just rationality, even in its philosophical sense.

General Conclusion

This thesis examined the question of equality as the necessary condition of possibility of justice, that is, as the necessary condition of human freedom, from a philosophical point of view. The need for this philosophical inquiry refers to the highly conceptual analyses involved by issues which have been raised by social justice theorists, such as the place of freedom in Rawls', the concept of capability in Sen's, or else the discussion on the comparative and transcendental approaches he launched. Further, the idea of equality being a moot point in itself, this conceptual examination led to settle specific stakes and to foresee some dimensions of social justice that enable going over its conception in terms of distribution of goods, such as the issue of social recognition. Starting from the object of justice, assumed as being human freedom—according to both its individual and social aspects—equality has shown itself a relevant concept to think and categorize social justice's concerns.

The outline of the reasoning could be synthesized in those terms: Freedom is the object of justice. The determination of freedom integrates social dimensions, of which recognition. Now, equality is necessary to perform recognition. So equality is necessary to achieve freedom and thus constitutes the condition of justice.

In more detail, Chapter 1 shows the deep relationship that joins equality and freedom as interdependent concepts: equality has been asserted as the condition of freedom and thus freedom as the object of equality, and some theories, such as Anderson's democratic equality, promote freedom as basically corresponding to a state of equality. Now, this inquiry aiming primarily at defining the content of the concept of equality as considered within the field of social justice theories, led to foresee a first argument of justification for the necessity of some form of equality for a conception of justice to be relevant, that is, the reason-based justification, which is precisely founded on the modern acceptance of freedom.

Chapter 1 also introduced one crucial distinction for our purpose, the one that separates particular from general equality and that suggests the tension which characterizes social justice. This distinction has been further developed in Chapter 2, showing how it comes from Amartya Sen's two questions: "Equality of What?" and "Why Equality?". The latter directly refers to one issue this thesis aimed at examining, that is how to justify the necessity of some form of equality for a theory of justice to be viable? This necessity has been expressed by Sen himself, and the answer he (implicitly) formulates relates to the requirement of impartiality he settles as unavoidable. Thus Chapter 2 was also the occasion to mention and clarify the impartiality-based justification of equality. The analysis of the "egalitarian formula" led to conceive of equality according to a normative perspective: equality refers to the requirement of impartiality and thus constitutes the conditional principle of any normative theory or ethical judgement, as *general* equality.

Chapter 3 takes this idea of general equality over to see what it involves in terms of distributive issues and deepens the point of integrating the theme of recognition into social justice considerations. The norm of equality is determined by its general and formal character, so that it can only be performed within an institutional frame, as it necessitates some mediation between the private partial parties. This refers to what we called "objective" recognition, a process that aims at *suspending* people's particularities and subjectivity, in order to perform the requirement of impartiality. Only *suspending* though, as the negation of people's subjectivity would determine

the principle of the Ancient State, that is rejecting the tension that shall be maintained in the social life. And this is why we introduced a second form of recognition, of subjectivity, also provided by the institutions but that aims, this time, at the emancipation of particularity. The Hegelian dialectics of the universal and the particular reinforces the presence of this tension, as he shows that it is by introducing the moment of civil society before the one of the State, that his system provides a possibility for real freedom—civil society precisely being founded on the contradiction of both principles of the universal and the particular, which conciliate in the Modern State. Chapter 3 also showed these Hegelian categories are actually relevant for Sen's theory, so that the issue of recognition is to be integrated within it.

Finally, Chapter 4 tried to take an opposing view, following the thought of Emmanuel Levinas, who offers a striking attempt to call what we settled as the norm of equality into question and warn against its totalizing dimension, that results, according to him, from the conceptual background that settled equality as a norm, as detailed in Chapter 1 (including the reign of reason and subjectivity). Its original conception of the being, which involves that the “responsibility for the other” is the principle of subjectivity and freedom, leads to determine his conception of justice as being two-dimensional: “political” justice is based on the essence of the “same” and “ethical” justice integrates the presence of the Other, but has to be considered as non-institutional. Now, the “same” is precisely what he calls a “Totality”, as being completely enclosed onto itself, and that is why he first rejects political justice, but finally argues for its practical necessity, regarding the fact that “in the real world there are many others” (Levinas, 1989, p. 247). The fact that he finally concedes a status to political justice enables one to minimize the radicalness of his conception, and especially of the responsibility for the other, so that there is finally room for the tension between the same and the Other, the particular will as a totality and the infinite.

Thus, from the question of the justification of the norm of equality, we got to the one of integrating issues of recognition and of acknowledging this tension that characterizes social justice, and that has expressed throughout the work according to various forms: equality and freedom, the universal and the particular, the objective and the subjective, the State and civil society, identity and difference, the same and the Other, but also political and ethical justice, totality and infinity; all

these couples present the common feature that they make sense when combined, in a dialectical way, on the mode of a back and forth movement to each other that allows maintaining the tension, as the point has been made in each chapters, regarding the respective couples.

Now, this may be said as constituting a structuralist approach, or relating to the Hegelian process of *Ausführung* (execution), that is to say the concept is inseparable from the whole and makes sense only through its mediation, through the relation with the other elements of the whole. Thus, each element has a role to play in the construction of a meaningful conception, on an equal footing, so that once again, the stake is to preserve this tension.

Mainly, what the presence of this tension shows is that, albeit the necessity of general equality, justice cannot be reduced to equality, as it is a far more complex issue than just a formal one. As already mentioned in Chapter 2, and following Sen's line of thought, justice cares about human situations, under social conditions that are framed by a constantly evolving context. Then, even though we settled the nature of justice in relation with the modern conception of the being and of freedom, these sights will evolve, and the content of equality may not always be determined by the value of freedom as it is.

Further, Sen's philosophy and especially his conception of democracy, through the ideas of public debate and open impartiality, based on the Smithian impartial spectator, integrates the idea of "admit[ting] voices from far" (Sen, 2009, p. xi), of "taking note of voices beyond the membership of the contractarian group, either to take note of their interests, or to avoid our being trapped in local parochialism" (*Ibid.*, p. 70), of giving "a very important place" to "distant voices" (*ibid.*, p. 90), or else of not neglecting the "voices from elsewhere", "just because they exist" (*Ibid.*, p. 130). And this idea seems to draw something of the reverse of subjectivity that we find in Levinas, or at least a will to welcome the Other in the rationale of social organization, that is, not starting only from the same, but also from the Other in the reflexion on justice.

We finally come to the conclusion that social justice is to be thought of according to a comprehensive conception of the being that integrates a complex vision of freedom, and settles it as its object. Equality is thus somehow given the status of a means, suggesting its instrumental nature. But eventually, this instrumental

dimension may not enter too much in contradiction with the idea of a “norm” of equality, as general and necessary, a norm rather being a sort of frame that one settles in order to reach higher ends. This idea of equality could be further developed and put in perspective as applied to the wider issue of global justice, that may induce new contradictions, that is, new ways of conceiving the tension.

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Summary

This thesis comes within the scope of the literature of contemporary social justice theories, while focusing on the question of equality and the way it became a fundamental concern for these theories. The thesis suggests a conception of equality as the condition of possibility of justice and thus of freedom, this one being assumed as the object of justice. It also tends to foresee the limits of such a conception, which has notably been addressed as for its totalizing implications.

In this reflexion, a specific concern will be given to the conception of justice developed by Amartya Sen who suggests, in his 1980 article “Equality of What?”, to foresee the concept of equality according to two dimensions: on the one hand, a general perspective of equality (related to the question “Why equality?”), and on the other hand, a particular perspective of equality (related to the question “Equality of what?”, that refers to the notion of space of equality, and thus to the Senian concept of capability for instance). In the field of economics, social justice theories essentially tend to answer the latter question, and thus focus almost exclusively on the conception of equality as a particular space. Now, this thesis defends the idea that the general, even formal, dimension of equality, that involves a concern for normative concepts such as recognition or impartiality, is as much important, although it is most of the time set aside by economists. It is in that sense that a philosophical approach turns out to be necessary: equality, as linked to a fundamental demand of impartiality regarding distributive issues and a modern conception of the being, appears as a true norm for modern social justice theories (notably since Rawls, 1971), and a philosophical approach shall enable us to understand the foundations of such a paradigm but also to foresee how to call them into question and evaluate their validity.

Thus, the essential question that has led this research work concerns the process of justification of general equality as the fundamental demand of social justice theories, notably in accordance with its object, that is freedom. This issue involves considering the tension that characterizes the question of justice, mainly involving the principles of the universal and the particular. This reflexion is led according to four moments: first, it investigates the justification of equality by the reason-based

argument, that is, the place of human reason in modern philosophy. Second, it develops the Senian argument of impartiality. From then, it tends to settle the insufficiencies of general equality as the condition of *actual* freedom, as linked to the claims of recognition. Finally, it evokes Levinas' criticism of the totalitarian dimension of the principle of equality, although he nevertheless acknowledges its practical necessity. Eventually, it is the necessity of the tension characterizing the essence of the being and its freedom on which light is shed.

Key words: Equality, Social Justice, Freedom, Recognition, Dialectics, Amartya Sen, Emmanuel Levinas, GW.F. Hegel.

Résumé en Français

Cette thèse s'inscrit au sein de la littérature des théories contemporaines de justice sociale, en se concentrant sur la question de l'égalité et la manière dont celle-ci est devenue une préoccupation fondamentale pour lesdites théories. La thèse propose une conception de l'égalité en tant que condition de possibilité de la justice et par là-même de la liberté, cette dernière étant supposée être l'objet de la justice sociale. Elle envisage également les limites d'une telle conception qui a notamment été critiquée pour ses implications totalitaires.

Dans cette réflexion, un intérêt particulier est porté à la conception de justice développée par Amartya Sen qui suggère, dans son article de 1980 « Equality of What? », d'envisager la notion d'égalité selon deux perspectives : d'une part, une approche générale de l'égalité (relative à la question « Pourquoi l'égalité ? ») et d'autre part, une approche particulière de cette dernière (relative à la question « égalité de quoi ? », qui renvoie à la notion d'espace d'égalité et ainsi au concept senien de capacité). Dans le champ de l'économie, les théories de justice sociale tendent essentiellement à répondre à la question « Egalité de quoi ? », et se concentrent ainsi presque seulement sur la conception de l'égalité en tant qu'espace particulier. Or, cette thèse défend l'idée selon laquelle la dimension générale, voire formelle de l'égalité, qui implique un intérêt pour des concepts tels que la reconnaissance et l'impartialité, est tout aussi importante, bien qu'elle soit la plupart du temps laissée de côté par les économistes. C'est dans ce sens qu'une approche philosophique se révèle nécessaire : l'égalité, en tant que liée à l'exigence fondamentale d'impartialité en matière de justice mais aussi à une conception moderne de l'être, apparaît comme une véritable norme pour les théories modernes de la justice sociale (notamment depuis Rawls, 1971) et une perspective philosophique nous permettra à la fois de comprendre les fondements d'un tel paradigme mais aussi d'envisager comment les remettre en question et interroger leur validité.

Ainsi, la question essentielle qui a guidé ce travail de recherche concerne le processus de justification du principe général d'égalité comme exigence

fondamentale des théories de justice, notamment au regard de son objet, la liberté. Cette réflexion est menée selon quatre moments : premièrement, elle s'intéresse à la justification de l'égalité par la place de la raison dans la philosophie moderne. Deuxièmement, elle déploie l'argument senien de l'impartialité. Elle envisage à partir de là les insuffisances de l'égalité générale en tant que condition de la liberté réelle, en lien avec les exigences de reconnaissance. Elle évoque par la suite la critique lévinasienne de la dimension totalitaire du principe d'égalité, qui reconnaît néanmoins la nécessité pratique de cette dernière. Finalement, c'est la nécessité d'une tension qui caractérise l'essence de l'être et de sa liberté qui est mise au jour. Le premier chapitre de la thèse pose ainsi la relation d'interdépendance des concepts d'égalité et de liberté, en partant de l'idée selon laquelle la norme générale d'égalité est le résultat de la compréhension moderne de l'être, qui insiste sur la place de la raison, elle-même considérée à l'origine de la liberté en tant que valeur absolue – ce qui nous mène à conclure que le contenu de l'égalité dépend de la valeur de la liberté. Ce chapitre vise ainsi à explorer les fondements du paradigme égalitaire des théories contemporaines de la justice sociale, en supposant que la valeur de l'égalité est intrinsèquement liée à la poursuite de la liberté depuis la philosophie moderne. Le point de départ est alors celui des critiques qui ont visé le concept d'égalité en tant que « vide » (Westen, 1982), pour montrer précisément que son contenu dépend de celui de la liberté. Néanmoins, la longue histoire des concepts d'égalité et de liberté les ont bien souvent opposés, jusqu'à concevoir leur relation comme antithétique (notamment au travers des traditions économique et politique modernes et contemporaines). C'est ainsi que ce chapitre postule l'idée selon laquelle la philosophie moderne et sa conception de l'individu (notamment les philosophies kantienne et hégélienne) opèrent la réconciliation, voire la synthèse des deux valeurs. Ce chapitre permet également de mettre au jour la justification de la norme égalitaire en tant que fondée sur la raison humaine.

Le deuxième chapitre porte sur la conception de l'égalité telle que développée par Amartya Sen, au regard des théories de justice, et vise la justification de la norme égalitaire en tant que fondée que l'exigence d'impartialité. En partant d'une question qu'il considère comme essentielle dans ce contexte, à savoir « Égalité de quoi ? », l'évolution de sa propre conception de la justice révèle une autre problématique essentielle : « Pourquoi l'égalité ? », qui implique une idée plus

générale de l'égalité. L'analyse de la « formule égalitaire », comme Sen l'appelle, mène à envisager l'égalité selon une perspective normative : l'égalité est une question d'impartialité et est en ce sens affirmée comme principe conditionnel de toute théorie normative ou jugement éthique. Cependant, on trouve chez Sen l'expression de deux formes d'égalité : l'une, qu'il développe explicitement, en termes d'« espace », et qui renvoie à la détermination de la variable qu'il s'agit d'égaliser entre les membres d'une société, en vue de répondre à la question « Egalité de quoi ? » ; et l'autre, plus implicite chez Sen, liée à la question « Pourquoi l'égalité ? ». Ce chapitre tend à mettre au jour cette distinction, et à approfondir la compréhension de la seconde acception. Par ailleurs, cette analyse finit par montrer que l'exigence d'impartialité, telle qu'elle est développée par Sen et qui justifie la norme d'égalité, révèle la pertinence de l'approche transcendantale pour sa propre idée de justice, bien qu'il la rejette en faveur de la méthode comparative (Sen, 2009)⁵⁹.

Le troisième chapitre reprend l'idée selon laquelle la norme d'égalité comme condition de l'impartialité est un principe fondamental pour toute théorie de justice. Cette norme d'égalité, qui résulte du questionnement « Pourquoi l'égalité ? », est déterminée par son caractère général et formel. C'est dans ce sens que ce chapitre tend à montrer que cette idée d'égalité formelle ne peut être réalisée qu'au sein d'un cadre institutionnel, dans la mesure où il s'agit d'un type d'égalité artificielle, construite, qui suppose une forme de médiation entre les parties privées. Cela implique un processus de reconnaissance que l'on nommera « objectif », dans le sens où il s'agit d'objectiver les situations individuelles, afin d'établir une structure symétrique dans la relation sociale intersubjective. Les parties sont alors perçues seulement à partir de leur essence légale, dans la suspension de leur subjectivité propre, ce qui permet la reconnaissance de leur nature morale égale, de leur autonomie. Ce processus constitue une première étape vers la réalisation de la liberté, en tant qu'objet de la justice sociale – une condition nécessaire mais néanmoins insuffisante. En effet, c'est en s'appuyant sur l'analyse hégélienne de la justice qu'il apparaît que la subjectivité doit pouvoir s'émanciper au sein de la sphère institutionnelle : les personnes doivent pouvoir suivre leur propre intérêt et choisir les principes de vie qu'ils ont raison d'estimer, ce qui implique pour les

⁵⁹ See footnote 9.

institutions de considérer leurs différences en termes d'opportunités de réaliser ces derniers. En explorant la dialectique de l'universel et du particulier telle qu'elle apparaît dans la pensée hégélienne de la vie éthique, ce chapitre montre la complémentarité d'idées objective et subjective de la reconnaissance dans le cadre des théories contemporaines de la justice sociale, et notamment pour la conception senienne en termes de capacités.

Le quatrième chapitre de cette thèse s'intéresse à la « théorie »⁶⁰ politique et de justice développée par Levinas, en tant que fondée sur sa conception originale de l'être, qui suggère que la « responsabilité pour autrui » est le principe de la subjectivité et de la liberté. Les concepts spécifiques de « Soi » ou de « Même », et d'« Autre », occupent une place centrale dans sa conception et leur analyse mène à envisager l'idée de justice selon deux dimensions différentes chez Levinas. Ce chapitre tend à montrer que le concept de « Même » implique une perspective *politique* de la justice, fondée sur le principe d'égalité, alors que le concept d'« Autre » renvoie chez Levinas à une forme *métaphysique* de la justice, qui repose sur le principe d'altérité, voire d'extériorité. Il s'agit donc ici de mettre au jour la conception lévinasienne de la justice, dans la mesure où celle-ci n'est pas clairement exprimée dans ses travaux et qu'il dévoile sa critique de la dimension politique de la justice de manière implicite au sein de ces derniers. Le mode d'être que Levinas appelle le « Même » renvoie à un processus d'identification à soi, où l'être ne se rapporte qu'à lui-même : la volonté existe alors par elle-même et pour elle-même, et c'est la raison pour laquelle Levinas qualifie le Même de « Totalité », en tant qu'être replié sur lui-même, « allergique » à l'extériorité. Or, l'Autre vient précisément introduire une présence absolument extérieure à ce mode d'être du Même, impossible à aliéner. Il repose sur l'idée de transcendance et évoque l'« Infini », en tant qu'opposé à la Totalité : il implique en ce sens une relation fondée sur l'asymétrie entre le Même et l'Autre – la « relation éthique », dont le principe est la « responsabilité pour autrui ». Or c'est cette idée de responsabilité pour autrui qui révèle, selon Levinas, la vérité de l'être et constitue ainsi le fondement de la justice. Néanmoins, sa conception de la justice est alors à

⁶⁰ Il s'avère en effet ambigu de parler de « théorie » politique chez Levinas dans la mesure où celle-ci se trouve relativement éparpillée au sein de ses œuvres. Elle est ainsi de nature plutôt implicite et se dévoile au fil de la lecture de ses travaux philosophiques ; elle est notamment exprimée par le biais de sa critique de la « tyrannie de la totalité », à savoir sa critique de ce qu'il appelle la « philosophie occidentale ».

envisager dans le sens d'une justification de l'être, selon une perspective d'ordre plutôt métaphysique, c'est-à-dire une forme de justice strictement non institutionnelle. C'est ainsi que l'on découvre chez Levinas une profonde remise en question de l'individualisme libéral sur lequel reposent selon lui les théories modernes de justice, notamment depuis Hobbes, avec une conception de la liberté qui est essentiellement fondée sur le libre-arbitre et la spontanéité de la volonté. Levinas opère un renversement de la structure de la subjectivité, dont le véritable point de départ doit selon lui être, non pas le Moi, mais l'Autre. Cette analyse permet ainsi d'envisager une manière tout à fait originale, et parfois troublante pour la philosophie moderne occidentale – dont il critique explicitement les fondements – de penser les modalités de l'être et ainsi de déterminer l'essence, le contenu de la justice, qui apparaît finalement comme bidimensionnel. La relation d'interdépendance de l'égalité et de la liberté affirmée au début de la thèse, est ainsi remise en question par la conception lévinasienne de l'être, néanmoins, sa critique admet la nécessité pratique de la justice politique, affirmant une justification de la norme égalitaire.

Ainsi, la question générale qui est celle de la justification de la norme égalitaire des théories contemporaines de la justice sociale pose celle des fondements d'un tel paradigme. La thèse soutient que le principe général d'égalité aujourd'hui admis comme exigence de toute démarche normative est essentiellement mis en œuvre en tant que condition de la liberté. Cette dernière s'affirme ainsi comme objet de l'égalité, ce qui est notamment manifeste dans les théories contemporaines de la reconnaissance et de la démocratie qui propose une sorte de synthèse des deux concepts, rendant ainsi compte de la tension qui caractérise la question de la justice.

Mots-clefs : Égalité, Justice sociale, Liberté, Reconnaissance, Dialectique, Amartya Sen, Emmanuel Levinas, GW.F. Hegel.

Equality and Social Justice.

A philosophical Approach

Résumé

Cette thèse s'inscrit au sein de la littérature des théories modernes et contemporaines de la justice sociale, en s'intéressant plus particulièrement à la question de l'égalité et à la manière dont elle s'est affirmée en tant que préoccupation fondamentale pour ces théories. En s'appuyant essentiellement sur les travaux d'Amartya Sen, d'Emmanuel Levinas et de G.W.F. Hegel, il est suggéré que l'égalité constitue la condition de possibilité de la justice, et ainsi de la liberté, cette dernière étant affirmée comme l'objet de la justice. Ce travail tend également à envisager les limites d'une telle conception, qui a notamment été remise en question pour ses implications totalisantes. Finalement, l'idée principale est d'investiguer la *tension* qui caractérise la justice sociale : la justice ne peut être réduite à l'égalité, bien que celle-ci soit supposée l'une de ses conditions nécessaires.

Mots clefs : Égalité, Justice sociale, Liberté, Reconnaissance, Dialectique, Amartya Sen, Emmanuel Levinas, GW.F. Hegel.

Résumé en anglais

This thesis comes within the scope of the literature of modern and contemporary social justice theories, while focusing on the question of equality and the way it became a fundamental concern for these theories. Essentially relying on Amartya Sen's, Emmanuel Levinas' and GW.F. Hegel's works, it suggests a conception of equality as the condition of possibility of justice, and thus of freedom, this one being assumed as the object of social justice. It also aims at foreseeing the limits of such a conception, which has notably been addressed for its totalitarian implications. Eventually, the main idea is to investigate the *tension* that seems to characterize social justice: justice cannot be reduced to equality, although it is assumed as one of its necessary conditions.

Key words: Equality, Social Justice, Freedom, Recognition, Dialectics, Amartya Sen, Emmanuel Levinas, GW.F. Hegel.