Critical Issues in Justice and Politics

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Articles

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From the Associate Editor

As we enter year five of publication, we present the reader with a dynamic mix of ideas; military-trained gang members, confidence in the US Supreme Court, the issue of secession in the US, and justices from social conflicts.

We would like to take this opportunity to thank, once again, our readers and contributors for making our journey to this point enjoyable and enlightening, all the while encouraging us to go forward.

Justice from Injustices through Social Conflicts

Leonard Mazzone
University of Studies of Florence

This paper tries to stimulate the debate within political philosophy about the concept of justice by adopting a critical perspective towards social phenomena implying conditions of domination. Despite the undervaluation of this category in political philosophy's field, the goal to prevent and to avoid social conditions implying domination should be conceived as one of the fundamental parts of a (negative) theory of justice.

This negative approach to the concept of justice is suggested by a double impasse, coming from the weakness of political philosophy in understanding social feelings and judgements about the illegitimacy of certain policies. and, secondly, from the main goal of a critical theory of society. That is, in my account, the presentation of a theoretical framework within which the possibility of emancipation from social conditions of domination is directly related to the experience of subordinate social groups and to their capacity to overcome them. In this sense, a critical theory of society should connect the normative role played by the concept of justice with the immanent character of a social diagnosis about contemporary social pathologies (Honneth A., 1994; Pulcini E., 2009; Renault E., 2008).

Moreover, this perspective would allow political philosophy not only to use some theoretical and political criteria to assess contemporary societies, but also to understand people's motivations in lasting conflicts and to value the rightness of their goals.

Introduction

In this paper I will try to clarify the meaning and the practical consequences of a "negative theory of justice", whose conceptual frame would provide the theoretical coordinates in light of which its pre-theoretical interest for emancipation of human beings could be coherently pursued. According to this goal, this paper tries to stimulate the debate within political philosophy about the concept of justice by adopting a critical perspective towards social phenomena implying conditions of domination.

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Despite the undervaluation of this category in political philosophy's field, the goal to prevent and to avoid social conditions implying domination should be conceived as one of the fundamental parts of a (negative) theory of justice, since the source of its criticism has nothing to do with transcendental or external arguments: according to this perspective, the elimination and the prevention of any condition of domination should be assumed as the main premise to talk seriously about the concept of justice. Such perspective would allow political philosophy to directly face the sense of injustice of people involved in asymmetrical relations of power, rather than continuing not to keep it into account simply because it is not involved or justified by already institutionalised norms. Moreover, this perspective would allow political philosophy not only to use some theoretical and political criteria to assess contemporary societies, but also to understand people's motivations in lasting conflicts and to value the rightness of their goals. Indeed, a negative theory of justice tries to provide a theoretical frame to join social claims coming from subordinate groups involved in material dimension of domination: its criticism of normative validation of this material dimension of domination encourages subordinate people to ask for the overcoming of dominant conditions and for their progressive reduction itself, when the balance of power within society does not allow them to directly ask for the overcoming.

By pursuing these goals, this article proposes a theoretical alternative to the "ideal" or "positive" conceptions of justice usually supported in political philosophy's field. First of all, this goal is suggested by empirical reasons: the great number of "theories of justice" presented in the last years is inversely proportional to the real changes inspired by their normative principles within the complex contest of today western societies. Despite their noble intentions, the positive theories of justice have been not able to convince the public sphere of today democracies in choosing certain policies rather than other ones. Moreover, the recent eclipse of welfare State, like the so-called "new spirit of capitalism", have been justified by recalling into mind the arguments used by twentieth century's social movements and by criticisms directed to capitalist structure

itself. In light of the last consideration, it is possible to say that dominant assets of power have been able to do what social and political theorists did not.

A negative approach to the concept of justice is suggested by a double impasse, coming from the weakness of political philosophy in understanding social feelings and judgements about the illegitimacy of certain policies and, secondly, from the main goal of a critical theory of society: that is, in my account, the presentation of a theoretical framework within which the possibility of emancipation from social conditions of domination is directly related to the experience of subordinate social groups and to their capacity to overcome them. In this sense, a critical theory of society should connect the normative role played by the concept of justice with the immanent character of a social diagnosis about contemporary social pathologies (Honneth A., 1994; Pulcini E., 2009; Renault E., 2008). On my view, of the most evident paradoxes consists in the repulsiveness of dominant relations of power to be called with their own name. Not casually, the so-called *Zeitgeist* of today is usually referred to the end of any great narration: after all, this belief represents a great narration in turn. The same rests valid for the presumed end of ideologies: this diffused belief represents an ideological "image of the world" too, since that dominant representation of alternative ways to conceive social relationships accuses them of being "ideological" for their critical potential towards our contradictory world.

By giving priority to dominant relations of power, a negative theory of justice intends to call things with their own name, in the hope that the accuse of "ideology" could be send back to its sender. o account simply because it is not involved or justified by already institutionalised norms. Moreover, this perspective would allow political philosophy not only to use some theoretical and political criteria to assess contemporary societies, but also to understand people's motivations in lasting conflicts and to value the rightness of their goals. Indeed, a negative theory of justice tries to provide a theoretical frame to join social claims coming from subordinate groups involved in material dimension of domination: its criticism of normative legitimation of this material dimension of domination encourages subordinate people to ask for the overcoming of dominant conditions and for their progressive reduction itself, when the balance of power within society does not allow them to directly ask for the overcoming.

Inside or Beyond the Conception of Justice as Fairness?

As noticed by Norberto Bobbio (Bobbio N., 1976, p. I), justice deserves particular attention among the recurrent ideas investigated by political philosophy (intended as the doctrine of the "best republic"). Not casually, its most fortunate works can be conceived as attempts to achieve a good society through an ideal model of state, grounded on some ultimate ethical postulates, regardless its fulfilment. Among these works, political philosophy cannot but be confronted with *A Theory of Justice* (Rawls J., 1971), which is commonly considered as one of the most systematic philosophical attempts to determine the conditions under which it is possible to obtain a fair social cooperation. Without any exaggeration, one of the strictest critics of *A Theory of Justice* – Robert Nozick – argued that, after its publication, all political philosophers should work

inside the Rawlsian conception of "justice as fairness" or they have to explain why they choose not to do so (Nozick R., 1974). The first part of the paper will briefly focus the attention on the main, unresolved, ambiguities of the Rawlsian conception of "justice as fairness." Among these, it is worthy to be mentioned Rawls' aim to construct an *ideal* theory of justice (Rawls J., 1971, pp. 243-261). Indeed, idealism of Rawlsian conception of justice as fairness creates a lot of difficulties in understanding the interplay between norms and conflicts and their role in promoting more just societies (Honneth A., 1992).

In *A Theory of Justice* the "original position" takes place of the classic social contract elaborated, differently, by Hobbes, Locke and Rousseau.[1] In this imagined condition of primordial equality, principles of justice result from an agreement between free and rational people, interested in conciliating the pursuing of their interests with a fair distribution of social resources by the basic structure. The parties involved in the original position do not know anything about their personal identities or interests; moreover, their representatives have to choose under an imagined state of selective ignorance, the so called "veil of ignorance."[2] Together with this "device of representation", circumstances of justice,[3] formal constraints of the concept of right[4] and rationality of contracting parties[5] describe the contractual conditions of the original position. Moreover, these conditions limit the range of admissible *conceptions* which compete each with each other to highlight the closest *concept* of justice (Hart H. L. A., 1961) to the criteria of the contractual procedure.[6] According to Rawls, the coexistence

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[1]   Rawls J., 1971, p. 12: . In justice as fairness the original position of equality corresponds to the state of nature in the traditional theory of social contract. This original position is not, of course, thought of as an actual historical state of affairs, much less as a primitive condition of culture. It is understood as a purely hypothetical situation characterized so as to lead to a certain conception of justice.

[2]   Rawls J., 1971, 17-22. . [...] no one knows his place in society, his class position or social status, nor does any one know his fortune in the distribution of natural assets and abilities, his intelligence, strength and the like. [...] the parties do not know their conceptions of the good or their special psychological propensities, Rawls J., 1971, p. 12.

[3]   Objective circumstances of justice are related with any aspect of human life and make human cooperation both possible and necessary; on the other hand, subjective circumstances of justice have to do with different conceptions of good believed by people: "For simplicity I often stress the condition of moderate scarcity (among the objective circumstances), and that of mutual disinterest, or individuals taking no interest in one another's interests (among the subjective circumstances)." Rawls J., 1971, p. 119.

[4]   A conception of right is a set of principles, *general* in form and *universal* in application, that is to be *publicly* recognized as a *final court of appeal ordering the conflicting claims* of moral persons, Rawls J., 1971, p. 124 (cursive in the text is mine).

[5]   This condition of original position consists in the envy's absence and in the reciprocal disinterest between contracting people. Moreover, sense of justice of contracting parties ensures that, once chosen in the original position, the principles of justice will be observed. See Rawls J., 1971, pp. 130-132.

[6]   Rawls turns to the notion of "pure procedural justice" because it transfers its fairness to its effects or

of these conditions would determine the choice of contracting people in favour of two principles of justice, at first intuitively explained in the second chapter of *A Theory of Justice*[7] and, subsequently, compared with alternative conceptions.

This short summary evidences a fundamental aim of Rawls' constructivism. *A Theory of Justice* presents two principles of justice obtained through a contractual procedure which is disinterested in natural and social factors without any moral relevance and, therefore, morally arbitrary. In this respect, the proposal of *A Theory of Justice* consists in providing a neutral concept of justice, different from any other conception of the same topic, as required by a complex society shot through by identity and conflicts of interests between its members because of their reciprocal advantage derived from social cooperation. According to the first principle, all people should enjoy a fully adequate scheme of rights and basic liberties, whereas the second one guarantees that all should enjoy fair equality of opportunities and, through the so called "principle of difference," prohibits any inequality which does not benefit the worse off members of society. In addition, the lexical priority of the first principle of justice categorically forbids us to sacrifice the listed liberties in order to achieve bigger social and economical advantages.

Despite of the complex and rigorous structure of the Rawlsian speech about justice, some critics have evidenced some ambiguities linked with the lexical priority of the first principle (Hart H. L. A., 1973) and the set of basic goods[8]. In order to eliminate these ambiguities, the second edition of *A Theory of Justice* emphasized the importance of the two moral powers held by the contracting parties, the capacity to have sense of justice and to have a certain *conception of the good* (Rawls J., 1999). Linked to these two capacities are so many qualities of the contracting parties, who are *rational* in choosing the best means to pursue their ends and *reasonable* in understanding and applying the principles of justice through which a fair cooperation is ensured.

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results, once it has been lead to the end: indeed there is not any independent criterion in light of which it would be possible to gain a certain result, see Rawls J., 1971, pp. 85-86. Rawls calls "perfect procedural justice" that procedure which distributes resources on the ground of external criterion to the same procedure. Again, in the case of "imperfect procedural justice", distributive procedures can provide a just procedural model without ensuring its realization.

[7]   See Rawls J., 1971, pp. 48-51. This first step of Rawlsian argumentation is made possible by the "reflective equilibrium", through which contracting parties can obtain the coherence between their believes and principles of justice in the original position.

[8]   In the second part of the second principle of justice (principle of difference), Rawls judges the opportunities that people have through the means they possess, without taking seriously the variations they have in being able to convert primary goods into good living. A. K. Sen has focused his attention on this criticism in various works: at this regard, see Sen A. K., 1980; Id., 1992 and, finally, Id., 2010. The conversion of primary goods into the capability to do various things that a person may value doing can vary enormously with differing inborn characteristics (for example, propensities to suffer from some inherited diseases), as well as disparate acquired features or the divergent effects of varying environmental surroundings (for example, living in a neighbourhood with endemic presence, or frequent outbreaks, of infectious diseases). There is, thus, a strong case for moving from focusing on primary goods to actual assessment of freedoms and capabilities, Id., 2010, p. 66.

One of the most important criticisms advanced against *A Theory of Justice* concerns the original position's neutrality. In this regard, critics of the Rawlsian theory of "justice as fairness" have argued that the two principles of justice would not *respect* plural identities shared by individuals belonging to different cultures. Individualism of the Rawlsian conception of "justice as fairness" would fail to recognize people's belongings to their social, cultural or ethnic groups and would disrespect them (Sandel M., 1982; Taylor C., 1992a, 1992b). At this regard, the individualistic perspective adopted by Rawls in his description of the original position would not ensure *fairly* the initial *fairness* of the contracting people (Nagel T., 1973).

In *Political Liberalism*, Rawls admitted the comprehensive nature of his previous Kantian constructivism and elaborated a political – not moral – conception of liberalism, in order to achieve an overlapping consent among irreducible but reasonable comprehensive doctrines within a certain society (the so called "fact of reasonable pluralism"). Indeed, the fact of pluralism requires us to distinguish the reasonableness of an overlapping consent from the rationality of a mere *modus vivendi* (Rawls J., 1993), so that modern democratic and constitutional states are beginning to look like "well-ordered societies." Not justifiable by any substantive conception of the good – which could not be shared by all the citizens – the content of the overlapping consent has to be neutral and impartial between such conceptions of the good, in order to attract their common agreement, even though for different motives. The political conception of the person implies people's double capacity of being rational and reasonable at the same time. In this way, political liberalism ensures that every reasonable doctrine proposes and accepts principles needed for social equal cooperation, without renouncing to its rationality, that is, to its conception of the good. Citizens should regard themselves as free – not only capable of having conceptions of the good, but as self-authenticating sources of valid norms – and equal, according to citizens' capacity to reciprocally recognize their moral powers of rationality and reasonableness.

Nevertheless, in *Justice as Fairness. A Restatement* Rawls admitted that the original position does not ensure a unique emergence of a given set of principles of justice that together identify the institutions needed for the basic structure of the society (Rawls J., 2001, pp. 132.134).[9] The comparison between the two principles of justice and other alternatives in *A Theory of Justice* could not be valued as complete, since some variants of utilitarianism could be chosen in the original position as well as the two principles of justice. Institutional approach of the Rawlsian conception of justice as fairness, I think, undermines his political liberalism too. Indeed, in order to define some conceptions of the

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9   Rawls J., 2001, pp. 133-134: "...there are indefinitely many considerations that may be appealed to in the original position and each alternative conception of justice is favoured by some consideration and disfavoured by others. […] The balance of reasons itself rests on judgment, through judgment informed and guided by reasoning."

good as reasonable – other than rational – it is necessary to define the political principles of justice that these conceptions should share.[10] The impossibility to gain a unique set of principles of justice through the original position does not seem only hit at the roots of the moral constructivism of *A Theory of Justice*, but also *Political Liberalism*'s ones.

I think that these problems concerning the theoretical development of the conception of justice as fairness are due to the idealistic approach adopted by Rawls. Indeed, he divided his theory of "justice as fairness" in two parts. The first, called "ideal theory," had to provide the principles of justice in light of which it could be possible to face the other, "not ideal" part, of the same theory. As the entire history of idea of justice shows, also its Rawlsian account reduced the injustice to a mere contradiction of the basic structure requested by the ideal norms. This way of conceiving injustice as a simple opposite-notion of some "normal" or ideal conception of justice did not allow philosophy to take seriously the victims – often silent – of material and symbolic violence (Shklar J. N., 1990). Moreover, despite the characterization of perfectly just institutions has become the central exercise in the modern theories of justice (Sen A. K., 2010, p. 8), their idealistic approach to this topic seems not to fully recognize the role played by legal norms on people's sense of injustice (Boudon R., 1995) and, therefore, its relevance in promoting social conflicts (Honneth A., 1990).

Taking Humiliation Seriously

Besides the idealistic perspective adopted by Rawls – as by the majority of political philosophers focusing on the topic of justice (i.e. Nozick R., 1974; Ackerman B., 1980) – there is an alternative way – which I will call "critical" – to contextualize the notion of justice in present societies. As Amartya Sen recently argues in his last book, *The Idea of Justice*, this concept seems to attract our interest when it is conceived as the practical negation of injustice, rather than as the description of the best society. In this sense, injustice is not reducible to a mere contradiction of the institutionalized or "ideal" norms. Social claims for ending it have to be read as demands for *more* just – not for perfect – societies. According to Sen, it is possible to make an example at this regard, with reference

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[10]   See also Rawls J., 1999, pp. 137: "The content of public reason is given by a family of political conceptions of justice, and not by a single one. There are many liberalisms and related views, and therefore many forms of public reason specified by a family of reasonable political conceptions. Of these, justice as fairness, whatever its merits, is but one." I tried to summarize the problems and the unsolved contradictions of Rawlsian thought across all his works and articles in my Master Degree Dissertation, *Beyond Domination, before Justice. A Draft of a Negative Theory of Political Justice*, available on http://www.tesipub.it/search.html after have been inserted the dissertation's Italian title, *Oltre il dominio, prima della giustizia*.

to the history of the abolition of slavery: it was the diagnosis of an intolerable injustice in slavery that made abolition an overwhelming priority, and this did not require the search for a consensus on what a perfectly just society would look like (Sen A. K., 2010, p. 21).

Just by recovering the Hegelian dialectic of Master/Slave struggle, Avishai Margalit has shown that the experience of humiliation embodied in such an asymmetrical relation of power can indirectly give the concept of human dignity a minimal meaning, able to attract the consent of different conceptions of social justice and different conceptions of the "good life." According to Margalit, to take humiliation seriously would allow us to do the same with the concept of equal respect. No Master could humiliate his servant if he could not recognize him as a human being able to admit his own inferiority and Master's superiority. In this regard, the Master's humiliating intentions concretely testify the importance of human dignity in human interactions. Without the consciousness of his servant's humanity, the Master could not intentionally humiliate him.

Nevertheless, a critical theory of society has to face also unintentional conditions of humiliation. Apart from the present discussion, what Margalit names a "sceptical" justification not to humiliate human beings,[11] he has focused his attention on a negative justification which could morally ground the duty not to humiliate people. Since no one argument could provide any good reason to justify humiliating acts or conditions, according to Magalit we should get rid of cruelty first, as advocated by Judith Shklar (Shklar J. N., 1984); humiliation is a close second. A decent society is one whose institutions do not humiliate people, that is, give people good reasons to consider their self-respect to be injured, since the ability of individuals to respect themselves is dependent on their social and political circumstances (Margalit A., 1996).

In Margalit's standpoint, people who feel their self-respect injured would have good reasons to feel humiliated, especially if the received injuries were caused by a member of the inclusive group to which the presumed victim belongs. This kind of argument would not be able to explain another phenomena of humiliation, which do not have direct bearing on people's cultural belongings. For example, Margalit's perspective about the good reasons that people have to demonstrate their self-respect as injured does not apply to the experience of workers' exploitation. In this regard, workers could not demonstrate that the exploitative conditions they suffer would be equally felt as such if they were caused by colleagues' behavior, just because the social function played by factory

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[11]   According to this kind of justification, what justifies our experience of respect for humans (or other beings) as grounds for an obligation is its coherence with our other moral beliefs: our attitude respecting people gives respect its proper meaning.

owners and by workers are not interchangeable. These problems concerning Margalit's argument are due to his distinction between intrinsic and indirect humiliation. The first one would apply to forced-labor, whereas the second one would concern the exploitation in the workplace. Margalit traces this distinction because a decent society should guarantee an equal (and intrinsic) not-humiliation to all human beings. Humiliation would have to do with human dignity, which would not depend on distribution of social resources, but directly on human identity moulded by interactions between individual and their social groups of reference.[12]

Nevertheless, Margalit's perspective is not able to explain that the analytical difference between intrinsic and indirect humiliation is only the result of historical conflicts, which materially extended the meaning of human dignity – formally ensured by the modern law – by obtaining the abolition of slavery. Historically, with the birth of the modern state, equal respect progressively substituted the role previously assumed by social status, transforming honor owed to certain people[13] in unconditional respect owed to everyone. In recent years, Axel Honneth has tried to elaborate a social and normative theory in which inter-subjective relationships and requests for recognition are essential preconditions of socialization and individualization processes. Honneth focuses his theory of social criticism on the way people's self-respect and self-identity necessarily depend on the recognition of others and, as such, are vulnerable of being ignored both by social institutions and in interpersonal interactions (Honneth A., 1992). In particular, what is of interest to us about Honneth's critical theory are the thin boundaries that he traces between two modern spheres of recognition, the law and solidarity. By reacting to moral issues coming from civil society, the first one implies the modern notion of equal respect, generalizing both the whole of recipients to which rights apply and the material contents of the rights themselves (Honneth A., 2001).

Honneth's model allows us to conceive the notion of an equal not-humiliation dynamically, not only regarding the past, but, more importantly, the present and the future of this concept. As such as equal respect took the place of

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[12]   According to Margalit, the concept of self-respect is essential for examining the oppression of women, people of colour, gays and lesbians, and other groups that are marginalized, stigmatized, or exploited by the dominant culture, identifying ways in which oppressive institutions, images, and actions can prejudice the self-respect of members of these groups: according to this perspective, second class citizenship, unemployment, snobbish institutions, and violations of privacy are practical examples of humiliating policies.

[13]   See Darwall S., 1977: another significant distinction worth to be underlined is between respect and honour: in the pre-modern world, honour acted as an intermediary in attributing value to people in relation to their social status hierarchically differentiated.

honor in distributing consideration and, through it, social goods with the modernity (Walzer M., 1983), we could conceive the recognition-respect of tomorrow as the overcoming of today humiliations, if we could render account of better "good reasons" than those presented by Margalit to assess the legitimacy of people's judgements about their received injuries. In this perspective, we could accept the negative perspective adopted by Margalit *to justify the priority assumed by the political goal of an equal not-humiliation due to every human being, without delimiting it to a decent society*. Such perspective would allow political philosophy to directly face the sense of injustice of people involved in asymmetrical relations of power, rather than continuing not to keep it into account simply because it is not involved or justified by already institutionalized norms. In order to demonstrate the reliability of this hypothesis, it is necessary to follow Judith Shklar's invitation to recognize the sense of injustice experienced by the victims, independently from what justice prescribes (Shklar J. N., 1990). In this way, the sense of injustice is distinguished from a simple negation or omission of the duties required by the current model of justice.

Nevertheless, since that not every sense of injustice can testify to a real injustice, a negative theory of justice has to determine what social conditions are humiliating, even though they have not been publicly recognized as such as a consequence of social conflicts. For now, it is enough to consider that, as humiliation is prior to respect for cognitive, logical and moral reasons, the same happens in the case we compare the negative category of domination with justice's one. By taking root in situations of asymmetrical relations of power between people, their hierarchical character seems to make the condition of domination more recognizable than the actualization of any positive idea of justice; besides this cognitive argument, the elimination and the prevention from any condition of domination seems to be morally prior to the promotion of "justice." It is enough to consider that the most systematic work in political philosophy, *A Theory of Justice*, does not take seriously into account the problems linked with handicap iniquities, transnational redistribution of resources, violence towards animals (Nussbaum M. C., 2006) and gender inequalities (Okin S. M., 1989), besides indirectly justifying degrading acts towards foreign people.[14] Finally, differently from the notion of justice, which

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[14]   Margalit's attention to the experience of humiliation shows another critical aspect of the two principles of justice defined by Rawls: in a Rawlsian sense, just societies should guarantee equal basic liberties and distribute social and economical disadvantages in favour of the least advantaged people who are recognized *as full title* citizens of these societies. Such principles of justice could be coherent with humiliating treatments or conditions against human people not fully recognized as citizens. Should we accept indecent policies – Margalit asks in his book – toward people not recognized as citizens in a certain society? Another question is more noteworthy still: should we continue to describe similar societies as just

denotes a state that is essentially a *by-product*, domination can be directly faced by subordinate groups through social conflicts. The overcoming of any condition of domination can be pursued by preventing any condition of asymmetrical relation of power which does not reduce or eliminate the asymmetry itself.

From Domination to Justice, through Social Conflicts

By renouncing to derive the source of its criticism from a transcendental or external argument, this critical conception of social justice conceives the elimination and the prevention of any condition of domination as the main premise to talk seriously about the concept of justice (Goth R., Dumouchel P., 2009). Like the positive concept of justice defended by Rawls and great part of philosophical tradition, this negative conception tries to obtain an overlapping consent on the same topic. Nevertheless, the subject of this overlapping consent does not concern any principle of justice, but rather the refuse of any condition of domination, worthy to be defined as unjust in light of its humiliating implications. Indeed, we can have a strong sense of injustice on many different grounds, and yet not agree on one particular ground as being the dominant reason for the diagnosis of injustice (Sen A. K., 2010, p. 2). This means that every condition of domination gives people – who feel their self-respect has been injured– optimal reasons for the feeling at issue. This critical approach allows political philosophy to question the already institutionalized values delegated to legitimate asymmetrical relations of power. Instead of starting from an ideal theory of justice, this approach starts from the social reality itself, so that its present injustices can be directly faced by oppressed groups (Honneth A., 2008; Renault E., 2004).

At this respect, it is needed to distinguish between cruelty or physical coercion and domination, both implying asymmetrical relations of power among their members, but differing from each other because of the contingent character of the former and the structural nature of the latter. Indeed, a lot of social relations within which one or more members actually threaten the use of the force to determine others social partners' behaviour, can do without any validation. It is the case of a robbery, where the thief does not need the consent

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ones? Indeed, if a fair society is not decent as well, it could tolerate degrading acts towards some people. The critical point focused by Margalit brings us in front of two possible alternatives: should we integrate the Rawlsian conception of "justice as fairness" with the negative duty not to humiliate any person – as Margalit argues – explaining in negative terms the meaning of the concept of respect; or the possibility that a just society (in a Rawlsian sense) could deny human dignity suggests to apply the features of a decent society's model to a just society too, analysing in a different way the concept of justice, without ever omitting the reference to not humiliating institutions?

of other people – who obviously would not consent to be robbed. In such cases, the threat of the force defines the core meaning of the notion of power: here the force is not potential but actual, and it does not need the consent of the least favored members of the relation (Pettit P., 1997, pp.44). Just this uselessness of any kind of validation makes these relations unacceptable, since that their more powerful members can quietly do without the other people' s consent. As Judith Shklar argued, violence – together with cruelty – is the first phenomenon every society should avoid in order to protect people's physical integrity (Shklar J. N., 1984). Rather than being immoral, coercion is simply not-moral, since its use represents a clear refusal of any argument acceptable by other social partners.

Nevertheless, physical coercion does not represent the unique significant part of inter-subjective relations and institutional policies. In order to persist, the majority of asymmetrical relations of power need the threat of the force dissimulated through social norms. Their stability requires them to legitimate the asymmetry of these relations. In such social conditions, power cannot directly and commonly recur to the use of the force, in order to avoid that ruled people oppose the ruling ones. In this regard, Canetti's words are worthy to be mentioned:

When force lasts a long time, it becomes power; but in the sharpest moment, which will arrive suddenly, it will be again pure force (Canetti E., 1981, p. 333).

In few words, *social power needs recognition.*[15] As highlighted by Max Weber, any power tries to excite and to cultivate the confidence in its legitimacy (Weber M., 1922, chap. I, §16 and chap. III, § 1).[16] Otherwise, it should always worry about its stability by showing the force and it would be condemned to the instability due to permanent social conflicts. Not casually, along history ruling people had to legitimize their power in order to avoid the danger represented by the potential resistance of ruled ones.[17]

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[15]   As Honneth evidences, . no one relation of recognition – neither the past ones within which subjects looked themselves as unequal – can do without the prerequisite of a norm accepted by all (Honneth A., 2010, p. 30).

[16]   Weber does not conceive the power as the mere might, consisting in any possibility to exercise influence among other humans, but he defines it as the *possibility*, for certain commands, to find obedience on the side of a determined group of humans.

[17]   Even though I have not space enough to deepen its reliability, this historical and sociological assumption suggest that domination progressively substituted the mere use of the force in mediating asymmetrical relations of power when the actual use of the force risked not to be a monopoly of ruling people. My assumption is that the ideological form of domination grows up with the overcoming of its material dimension. The historical assumption, here, is that more social norms overcome conditions of domination, more yet existent asymmetrical relations of power need to be dissimulated by social norms: otherwise, social norms would appear in reciprocal contradiction. If social history can confirm this

In this sense, the category of social domination joins both a symbolic and a material dimension. With the word "domination" we can mean those social conditions that, in order to persist, imply both asymmetrical relations of power and their validation, in order to attract the (silent) assent of people involved in them. Indeed, I use the category of domination to refer to those social conditions implying asymmetrical relations of power validated in light of values or principles, that – being prerogative of social groups already benefiting of them –, claim to equally guarantee every social member's rights of a certain community. From the last considerations, it should be sufficiently clear that every condition of domination implies a double level. The first one is *normative* and it has to do with social norms – above all, in modern societies, legal ones – and the second level is *material.* In turn, the latter implies both an asymmetrical status' recognition and an asymmetrical distribution of economical resources.

About the normative dimension of domination, social norms have always had a constitutive role for every social context as such. With an oxymoron, we could say that *normativity* embodied in social norms is essential for the existence and the reproduction of social *reality* (Searle J., 1995). In this passage of the paper, I suggest only that historically there have been different types of validation for the asymmetrical relations of power inside every society. As already remembered, modernity has ratified the end of any condition of social asymmetry as the only admissible justification for asymmetrical relations of power themselves. In this sense, the *promise of the modernity* can be expressed in the following terms: asymmetrical relations of power can be justified if and only if the asymmetry between dominant and dominated people is temporary and its goal consists in putting an end to the asymmetry itself. This promise depends on the modern idea according to which no *difference* between people is so relevant to justify the *superiority* of one of them on the other ones. No human being can be considered as inferior to another one just for his religious belief, race, or another natural and social aspect of his life-history. In this sense, modern law seems to have changed the quality of validation needed for the stability of asymmetrical relations of power.[18] All the promises of justice which formally contradict the promise of modernity are the cultural translation, through

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assumption, then it remains to question social norms which emancipate social conditions from domination in their empirical aspect, by focusing the attention in the maintaining of their promises. That means that historically the normative component of social domination should grow up with the reduction of its empirical part, which has to do with asymmetrical relations of power mediated by unequal distribution of economical resources and by cultural exclusion of social actors.

[18]   The end of asymmetry does not coincide with an egalitarian ideal, but only with the idea of equal respect due to every human being; neither we have to do with a mere example of the Rawlsian difference principle, since that it does not matter if the least favoured people receive more benefits from their being part of the social relation than if they were not.

social norms, of unjustifiable conditions implying an asymmetrical status' recognition and an asymmetrical distribution of economical resources. On the other hand, all promises formally coherent with the promise of modernity have to be analyzed in their empirical satisfaction. When they do not maintain what they promise, they are playing an ideological function towards the material dimension of domination, implying asymmetrical status' recognition and an asymmetrical distribution of economical resources. Rather than being simply contradictory, the last form of normative promise seems to look like what Hartmann and Honneth name a *paradoxical contradiction*. A contradiction is paradoxical when, just through the attempted realization of a certain intention, it diminishes the probability to realize this intention itself (Hartmann M., Honneth A., 2004, p. 63).

In this regard, Marxian criticism of the notion of justice can be very useful to obtain an internal – rather than immanent – source of criticism about social arrangements (Honneth A., 2008, p. 27).[19]. After all, the topicality of ideal models of justice along the history of philosophy is probably explicable in these terms. Taking no interest in the more or less actualization of their principles of justice, these theories authorize themselves to ignore social conditions in light of which contemporary demands of justice continue to claim meaning. As Norman Geras writes in *Literature of Revolution*,

> The contemporary discussion of precisely justice provides ample illustrative material, in the several conceptions of just social arrangements proffered in conjunction with more or less nothing, sometimes actually nothing, on how these might conceivably be achieved. The last and the largest paradox here is that Marx, despite everything, displayed a greater commitment to the creation of a just society than many more overtly interested in analysis of what justice is. (Geras N., 1986, p. 57)

Focusing on the not-maintained promises of justices embodied in legal – but also moral, religious and traditional – norms, Marxian criticism of the concept of justice provides a good starting point for a negative theory of justice (Marx K., 1978). Marx's criticism of capitalism' s contradictions seems to derive its validity apart from the over-discussed problem about his reference to a non-capitalistic principle of justice.[20] Indeed, Marxian interpretation of ideology

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[19]   Honneth A., 2008, p. 27: . Differently from the external criticism, an immanent form of criticism presupposes [...] that we can find a criterion, which is intrinsic to criticized relationship themselves as justified rational claim.

gives back to critical theory of modern societies the possibility to criticize its arrangements in light of contradictions met by its principles of justice and rights themselves. Since these principles and rights do not ensure the just conditions they pretend to protect or gain,[21] the source of social criticism can be found in an internal point of view. According to this interpretation, the judgement of capitalism as unjust because of its exploitative mode of production does not require any positive principle of justice, since it is worthy of criticism in light of ideological justifications provided by it in order to legitimize the subsistence of exploitation itself.[22] As appointed by Allen Buchanan,

> ...to criticise the slave-holder by attacking his false beliefs about the natural differences between slaves and free men is to employ what I have called an internal critique. For such a critique does not depend upon any juridical conceptions other than those already dominant in slave-holding society. The abolitionist need not appeal to a new concept of justice. He or she need only point out that the old concept of justice is being grossly misapplied as a result of socially reinforced false empirical beliefs about the range of individuals to which the concept of a human being, or a full-fledged juridical person, applies. (Buchanan A. E., 1982, p. 56)

[20]   In this regard, I cannot agree with Elster's and Cohen's interpretation, according to which Marx would think that capitalism is unjust, even if only implicitly and according to a non capitalistic conception of justice (see Cohen G. A., 1983, pp. 440-445): according to this interpretation, the contribution principle . serves as a criterion of justice that condemns capitalist exploitation as unjust. Looked at from the vantage point of fully developed communism, it is itself condemned as inadequate by the higher standard expressed in the needs principle, Elster J., 1985, p. 228. Another way to interpret Marx's account of justice is to say that his condemn of capitalism was grounded on values different from justice itself: according to this interpretation, "Marx bases his critique of capitalism on the claim that it frustrates many important non-moral goods: self-actualization, security, physical health, comfort, community, freedom, Wood A., 2004, p. 129. Nevertheless, the latter interpretation seems not to take seriously into account that, in Marx's standpoint, communist society can be conceived as a human community which is beyond justice itself: since that justice is a bourgeois concept, useful to legitimize the presence and the subsistence of material conditions of exploitation, it would become absolutely meaningless in a communist society, whose advent would sanction the overcoming of every exploitation as such. In this sense, the dissolution of the possibility itself of being exploited eliminates the possibility of justice itself: . A society "beyond justice" is one where no concept of justice applies. [...] Only where there is justice is there injustice. If there were no injustice, there would be no justice either. If we opt for a society where there is no injustice at all, and where there cannot be, we opt for a society without justice, for the notion "justice" would no longer make sense. Thus we would opt for a society beyond justice." Heller A., 1987, p. 223.

[21]   Buchanan A. E., 1982, p. 71: [...] one of Marx's internal criticism of capitalism is that, in the wage-relation, it violates its own principle that exchanges are to be free exchanges between equals.

[22]   Not casually, the new "spirit of capitalism" (Boltanski L., Chiapello È., 1999) shows that capitalistic practises need a justification, since that considered alone they are not able to mobilise sufficient motivational resources (Hartmann M. Honneth A., 2004, p. 61).

Social norms are just one part of the components of domination, which is also composed by asymmetrical status' recognition and an asymmetrical distribution of economical resources. First of all, it is necessary to specify that the asymmetrical distribution of economic resources does not concern only the redistributive field, but also the productive one (Weil S., 1951; Marzano M., 2008), just because also the property of the means of production is the outcome of redistributive processes. Indeed, besides *distributable resources* – whose pluralism of spheres requires one to avoid dominant redistribution assets (Walzer M., 1983) –, *production relations* deserve particular attention too. Indeed, they require the updating of the semantic meaningfulness of the typical categories of "alienation" and "reification" (Nussbaum M., 1995; Honneth A., 2005). The same applies to asymmetrical *status' recognition* produced by the institutionalization of social stigma applied against the inclusive groups which mold human life in every political community (Young I. M. 1990, Renault E., 2000). The proposal of a two-dimensional conception of social justice presented by Nancy Fraser provides a useful analytical tool to start an interdisciplinary comparison to study the empiric relationship among economical and cultural resources made subject of asymmetrical relations of power, whose ideological validation through norms assigns them the name of conditions of domination (see Honneth and Fraser 2003).

In this sense, a negative theory of justice should put the attention, first of all, on those social relations which cannot do without values or principles in order to justify the asymmetrical relations of power between people involved in them. Then, this theoretical perspective denounces as unjust those norms which are incompatible with the modernity's promise or do not maintain it. Oppressed people's standpoint should be considered as the first index of these disregarded promises. In this regard, it is essential that people's standpoint can be freely expressed. The impossibility that the least advantaged people can express their feelings in front of the most advantaged people of the same relationship – without incurring in worse consequences – testifies a minimal (but essential) proof of the existence of a condition of domination. This is the reason in light of which a critical perspective about justice cannot accept that any people involved in asymmetrical relation of power do not feel him/herself protected in expressing his/her sense of injustice.

This kind of domination is specific of the *political* sphere (Fraser N., 2009). By representing the public space within which ruling and subordinate people's standpoint meet each other, the political sphere is the only one which can better defend and, at the same time, react against conditions of domination. Bigger is the disparity between ruling people and subordinate ones and its

discretion, bigger is the tendency of subordinated to assume a stereotypical attitude. In other words, the more power is threatening, the more the mask is impenetrable. It is possible to imagine, in the context at issue, a wide range of situations going from the dialogue between friends having equal condition and power, on one part, to the concentration camp on the other one, within which the public transcript of the victim brings the mark of a mortal fair (Scott J. C., 1990, p. 16). The bigger the distance is between the hidden and the public transcript of domination, the bigger the domination itself is. On the ground of this theoretical framework, it could be possible to say that societies wherein there is a low level of social conflict are those within the level of political domination is higher.[23]

A critical theory of society has to look at the hidden transcript of subordinate groups in order to know their opinion about asymmetrical relations of power within which they are involved. To take only into account the public transcript of power relations and the social conflicts between subordinate groups and a ruling one would be a unilateral explanation of domination' s conditions. A negative theory of justice tries to provide a theoretical frame to join social claims coming from subordinate groups involved in material dimension of domination. Its criticism of normative validation of this material dimension of domination encourages subordinate people to ask for the overcoming of dominant conditions and for their progressive reduction itself, when the balance of power within society does not allow them to directly ask for the overcoming.[24] In this regard, rather than answering the question "Why ruled people should obey to rulers" (Bobbio N., 1999), this paper has tried to answer to another question: "Why ruled people should continue to obey to rulers?," since that they are not satisfied by the way they are treated and, above all, ill-treated by the rest of society.

By themselves, social conflicts decide about what can or cannot *materially* be qualified as unjust, once they have attracted the general aversion against conditions of domination within which conflicting people are involved. Not casually – maybe implicitly – a lot of social conflicts have a prominent role in *renaming* social reality.   This is the case of every significant social transformation, in light of which the adjective of "unjust" is generally recognized as the more relevant to describe certain social conditions, which previously were

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[23]   As James Scott shows in *The Art of Domination and Resistance*, these societies are those within the hidden transcript of domination rarely meets the public one, which consists in the patent interaction between subordinated people and ruling one. This explains why public transcript of domination is not able to render account of the entire history of power relationships and why it is not able to represent subordinate people's opinion.

[24]   As explained by Scott, tactical prudence imposes that only rarely subordinate groups directly work off their hidden transcript (Scott. J. S., 1990, p. 29).

only partially contested.[25] Not casually, the *political* struggle to attribute and to maintain a certain definition to an action is often as important as the action itself (Scott J. S., 1990, p. 271).

Bibliography

Ackerman, B. (1980). *Social Justice in the Liberal State*, New Haven: Yale University Press.

Bobbio, N. (1976). *La teoria delle forme di governo nella storia del pensiero politico*, Torino: Giappichelli.

Bobbio, N. (2009). *Teoria generale della politica*, Torino: Einaudi.

Boltanski, L., Chiapello, È. (1999). *Le nouvel esprit du capitalisme*, Paris: Gallimard.

Boudon, R. (1995). À propos des sentiments de justice: nouvelles remarques sur la théorie de Rawls. *L'Année sociologique*, 2, 273-295.

Buchanan, A.E. (1982). *Marx and Justice. The radical Critique of Liberalism*, London: Methuen.

Canetti, E. (1960). *Masse und Macht*, Hamburg: Claassen Verlag.

Cohen, G. A. (1983). Review of Allen Wood's Karl Marx. *Mind*, 92, 440-445.

Darwall, S. (1977). Two Kinds of respect. *Ethics*, 88, 39-49.

Elster, J. (1985). *Making Sense of Marx*, Cambridge: Cambridge University Press.

Fraser, N. (2009). *Scales of Justice. Re-imagining Political Space in a Globalizing World*, New York: Columbia University Press.

Geras, N. (1986). *Literature of Revolution. Essays on Marxism*, London: Verso.

Goth, R., Dumouchel, P. (Eds.) (2009). *Against Injustice*, New York: Cambridge University Press.

Hart, H. L. A. (1961). *The Concept of Law*, Oxford: The Clarendon Press.

Hart, H. L. A. (1973). Rawls on Liberty and its Priority. *University of Chicago Law Review*, 40, 534-555.

Heller, A. (1987). *Beyond Justice*, Oxford: Oxford Blackwell.

Honneth, A. (2008). *Das Gewebe der Gerechtigkeit. Über die Grenzen des zeitgenössischen Prozeduralismus*, Berlin: Suhrkamp.

Honneth, A. (1990). Integrität und Mißachtung. Grundmotive einer Moral der Anerkennung. *Merkur*, 501, 1043-1054.

Honneth, A. (1992). *Kampf um Anerkennung. Grammatik sozialer Konflikte*, Frankfurt am Main: Suhrkamp Verlag.

Honneth, A. (2001). *Leiden an Unbestimmtheit. Eine Reaktualisierung der Hegelschen Rechtphilosophie*, Stuttgart: GmbH & Co.

Honneth, A. (1994). *Pathologien den Sozialen. Die Aufgabe der Sozialphilosophie*, Frankfurt a. M.: Fischer.

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[25] "To determine the ideological content of recognition's forms becomes increasingly a difficult task, all the more we let us down into the dominant historical-cultural premises of periods took into account. It is only when interested parties themselves revolt against a dominant practise of recognition that we have a reference that allow us to call mere ideology about that period. Generally, this difficulty of evaluation becomes less problematic when temporal gap separating us from cases at issue grows up: more historical distance increases, more we have generally shared criteria that allow us to trace, retrospectively, a distinction between recognition forms that are morally claimed and ideological ones." (Hartmann M., Honneth A., 2004, p. 80-81).

Honneth, A. (2005). *Verdinglichung*, Frankfurt am Main: Suhrkamp Verlag.

Honneth, A., Fraser, N. (2003). *Umverteilung oder Anerkennung?*, Frankfurt am Main: Suhrkamp Verlag.

Margalit, A. (1996). *The Decent Society*, Cambridge: Harvard University Press.

Marx, K. (1978). *Critique of the Gotha Programme*, Moscow: Progress Publishers.

Nagel, T. (1973). Rawls on Justice. *Philosophical Review*, 83, 220-234.

Nozick, R. (1974). *Anarchy, State and Utopia*, New York: Basic Books.

Nussbaum, M. (1995). Objectification. *Philosophy and Public Affairs*, 4, 249–291.

Okin, S. M. (1989). *Justice, Gender and the Family*, New York: Basic Books.

Pulcini, E. (2009). *La cura del mondo*, Torino: Bollati Boringhieri.

Rawls, J. (1971), *A Theory of Justice*, Cambridge: Harvard University Press.

Rawls, J. (1999). *A Theory of Justice*, Oxford: Oxford University Press.

Rawls, J. (2001). Justice as Fairness. A Restatement, Cambridge: Harvard University Press.

Rawls, J. (1999). The Law of Peoples, Cambridge: Harvard University Press.

Renault, E. (2004). *L'expérience de l'injustice. Reconnaissance et clinique de l'injustice*, Paris: La Découverte.

Renault, E. (2000). *Mépris social. Etique et politique de la reconnaissance*, Paris: Éditions du Passant.

Renault, E. (2008), *Souffrances Sociales. Sociologie, psychologie et politique*, Paris: La Découverte.

Sandel, M. (1982). *Liberalism and the Limits of Justice*, Cambridge: Cambridge University Press.

Scott, J. (1990). *Domination and the Art of Resistance*, New Haven: Yale University Press.

Searle, J. (1995). *The Construction of Social Reality*, New York: The Free Press.

Shklar, J. N. (1984). *Ordinary Vices*, Cambridge: Harvard University Press.

Shklar, J. N. (1990). *The Faces of Injustice*, London: Yale University Press.

Sen, A. (1980). Equality of What?. In Mc Murrin S. (Ed.), *Tanner Lectures on Human Values*, (pp. 195-220). Salt Lake City: University of Utah Press.

Sen, A. (1992). *Inequality Re-examined*, Oxford: Oxford University Press.

Sen, A. (2010). *The Idea of Justice*, London: Penguin.

Taylor, C. (1992a). *Sources of the Self. The Making of Modern Identity*, Cambridge: Harvard University Press.

Taylor, C. (1992b). *The Politics of Recognition*, Princeton: Princeton University Press.

Young, I. M. (1990). *Justice and the Politics of Difference*, Princeton: Princeton University Press.

Walzer, M. (1983). *Spheres of Justice: A Defence of Pluralism and Equality*, New York: Basic Books.

Weber M. (1922). *Wirtschaft und Gesellschaft*, Tübingen: Mohr.

Wood, A. (2004). *Karl Marx*, London: Routledge.