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Beyond Dominion, Beyond Possibility of Justice

In the foreword of his course concerning the theory of the forms of government along the history of political thought, Norberto Bobbio noticed that – differently from the history of political doctrines and political science – the study and the analysis of the so-called recurrent ideas¹ identify the disciplinary status of political philosophy. Among these recurrent ideas, justice deserves particular attention: besides having assumed a primary role within the whole of the ideas discussed in the course of history of political thought, this idea represents the main concern that political philosophy – intended as the doctrine of the “best republic” – is requested to solve. Justice is one of the central topic of political philosophy because it calls to mind its normative status, through which social institutions and, more generally, social relations can be made subject of critique.

Not casually, the most fortunate works in political philosophy's field can be conceived as attempts to propose solutions to achieve a good society through an ideal model of state, grounded on some ultimate ethical postulates, regardless its actual fulfilment. Among these works, political philosophy cannot but compete with *A Theory of Justice*²: besides contributing to the reborn of the international interest toward political philosophy as such, the Rawlsian greatest work has influenced not only the debate within this discipline, but also the rest of the social sciences.

Without any exaggeration, one of the strictest critics of *A Theory of Justice* argued that, after its publication, all political philosophers should work within the Rawlsian conception of “justice as fairness” or they have to explain why they choose not to do so³. Although «the characterization of perfectly just institutions has become the central exercise in the modern theories of justice»⁴, in the first part of this paper I will argue some reasons not to keep working within its most important example, the Rawlsian conception of “justice as fairness”. After all, together with the ideal theory of justice advanced by the majority of political philosophers, there is another way to conceive this concept. At this regard, Marxian criticism of justice can be very useful to directly face the sense of injustice – as suggested by Judith Shklar⁵ –, rather than continuing not to keep it into account simply because it is not justified by already institutionalised norms.

¹ Bobbio, N., *La teoria delle forme di governo nella storia del pensiero politico*, Giappichelli, Torino, 1976, p. I.

² Rawls J., *A Theory of Justice*, Cambridge (MA), Harvard University Press, 1971.

³ Nozick R., *Anarchy, State and Utopia*, Basic Books, New York, 1974.

⁴ Sen A. K., *The Idea of Justice*, Penguin, London, 2010, p. 8.

⁵ Shklar J., *The Faces of Injustice*, Yale University Press, New Haven, 1992.

Overlapping consent: about justice or injustices?

The Rawlsian conception of “justice as fairness” is one of the most systematic philosophical attempts to determine the conditions under which it is possible to obtain a fair social cooperation, in a way that gains the consent of the members of a community regardless of their social classes or status. *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. 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”, it prohibits any inequality which does not benefit the worse off members of society. The lexical priority of the first principle of justice categorically forbids 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 principle⁶ and the set of basic goods⁷. Apart from these objections, the Rawlsian conception of justice as fairness seems not be able to demonstrate what it initially promised to do: the neutralist account of justice provided by Rawls does not justify the convergence of different conceptions of justice on the two principles of justice. Not casually, 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 society⁸: Rawls does not provide convincing arguments that would eliminate all other alternatives that might compete each other in the original position. The comparison between the two principle of justice in *A Theory of Justice* could not be valued as complete, since that some variants of utilitarianism could be chosen in the original position as well the two principles of justice. Institutional approach of the Rawlsian conception of justice as fairness, I think, undermine his political liberalism too: indeed, in

⁶ See Hart H. L. A., *Rawls on Liberty and its Priority*, in «University of Chicago Law Review», 40, 1973.

⁷ 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, among which are worthy to be seen Id., *Equality of What?*, in Mc Murrin S. (ed.), *Tanner Lectures on Human Values*, vol. I, Cambridge University Press, Cambridge, and University of Utah Press, Salt Lake City (UT), 1980; Id., *Inequality Re-examined*, Oxford University Press, Oxford, 1992 and, finally, his last book, *The Idea of Justice*, cit., p. 66: «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».

⁸ Rawls J., *Justice as Fairness. A Restatement*, Harvard University Press, Cambridge (Mass.), 2001, pp. 132-134. Rawls writes: «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 judgement, though judgement informed and guided by reasoning», *ivi*, pp. 133-134.

order to define some conceptions of the good as reasonable – other than rational –, it is necessary to determine the political principles which these conceptions should share⁹. 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 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, the “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 social behaviour requested by the institutionalized 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 violence¹⁰.

As Amartya Sen recently argues in his last book, *The Idea of Justice*, this concept attracts our interest when it is conceived as the practical negation of injustice, rather than as the description of the best society: «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»¹¹. In this sense, injustice is not reducible to a mere contradiction of the institutionalized norms: social claims for ending it have to be read as demands for *juster* – not for perfect – societies. According to Sen, it is possible to make an example at this regard, with reference to the history of the abolitions 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»¹². As the positive concept of justice defended by Rawls and great part of philosophical tradition, also this negative conception of the same topic tries to obtain an overlapping consent: nevertheless, the subject of this overlapping consent does not concern any principle of justice – be it derived from procedural or substantial conceptions of the item at issue –, but it has to do with social conditions within human sufferance is justified by institutionalized norms which do not maintain their promises of justice.

After all, Bobbio himself noticed another way to face the problem of justice, called

⁹ See also Rawls J., *The Law of Peoples*, Harvard University Press, Cambridge (MA), 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 Dominion, 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*.

¹⁰ Shklar J., *The Faces of Injustice*, cit.

¹¹ Sen A.K., *The Idea of Justice*, cit., p. 2.

¹² *Ivi*, p. 21.

“overturned utopia”: it consists of describing the worst republic which every society is requested to avoid, in order to achieve the justice of its structure. I want to argue that Marx's critique of capitalism suggests us to localize the worst condition to be avoided not in an hypothetical world¹³, but in the present one, characterized by the constant exploitation of workers and its correlated private property of means of production.

The reference to Marx is not accidental, since that he can be included at full title among those thinkers who tried to focus the attention on unbearable and unjustifiable conditions, rather than on some sort of model of perfect society, in order to really end them. Anyway, it is necessary to admit that Marxian criticism of capitalism is not separable from his aversion towards the concept of justice: what I call “negative conception of justice” shares with Marx the priority to avoid the conditions which are responsible of avoidable human sufferance; nevertheless, the use of the word justice itself shows a relevant difference with Marxian remarks to socialist habit to appeal to this concept as an ideal to be achieved, rather than as an ideological tool, useful to mask and to justify capitalism.

In the next passages of my paper, I will argue that Marx's account of capitalism's contradictions could become very fruitful for the construction of a negative theory of justice: indeed, my feeling is that in order to criticise social phenomena or conditions as unjust we are not bound to construct and to share the same principles of justice. Rather, we have to question the promises of justice implied by institutionalized norms: this internal criticism would allow us not to wait a general and universal agreement about any principle of justice to face actual injustices.

After all, the topicality of ideal models of justice along the history of philosophy is probably explicable in this terms: taking no interest in the more or less realizability 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 [...] 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.*¹⁴

¹³ Examples of hypothetical worst republics can be found in literature: Orwell's *Animal Farm* is an example.

¹⁴ Geras N., *Literature of Revolution. Essays on Marxism*, Verso, London, 1986, p. 57.

Justice as Ideology: Marxian Remarks to Socialism

The combination between Marx's works and the notion of justice can – at least at a first look – seem totally misleading. The probable surprise generated by the combination at issue is due to Marx's deep criticism of the possibility itself to speak about this concept without ideological compromises. After all, the distance between Marxists and normative suggestions coming from contemporary political philosophy has to be searched in the criticism of the concept of justice built by Marx himself. In order to face this critical point, in this part of the paper I will focus the attention on the unique text within which the words “justice” and “law” frequently appear, even though only in critical terms. I will further argue that, even without constructing any principle of justice, Marx's criticism of capitalism can be intended as a denounce of its injustice: this opinion can be grounded only in a negative theory of justice, which is disposed to conceive injustices independently from any principle of justice. Indeed, instead of starting from some abstract principles of justice – derived from procedural or substantial variants of the ideal conception of justice –, Marx focused himself on exploitation's conditions and, because of their ideological grounds, on their overcoming.

The *Critique of Gotha Programme*¹⁵ was written by Marx in 1875, shortly earlier the Gotha Unity Congress. No one of the Marxian criticisms addressed to the terminology of the draft at issue has a mere nominal value: instead of setting down general phrases about “labour” and “society”, Marx's aim consisted in proving concretely how in capitalist society the material conditions have been created and how they enable and compel the workers to lift their social curse.

According to Marx, the programme is shot through by democratic demands (universal suffrage, direct legislation, popular rights, etc.) whom contradictory character is due to the fact that they are already carried out, even if not yet in the German Empire. The German Workers' Party demand for a single progressive income tax as the economic basis of the state presupposes «the economic basis of the government machinery and nothing else»¹⁶, besides «various sources of income of the various social classes, and hence capitalist society»¹⁷. Instead of conceiving the abolition of class distinctions as the end of all possible social and political inequality arising from them, the draft claimed the simple abolition of all social and political inequalities. Besides, the request for the establishment of producers' cooperative societies with state aid under the democratic control of the toiling people represented another meaningless expression in Marx's opinion:

¹⁵ Marx K., *Critique of the Gotha Programme*, Progress Publishers, Moscow, 1978 (VIII ed.). The foreword was written by Engels in occasion of the publication of Marx's *Critique of the Gotha Programme* in the journal «Die Neue Zeit», Bd. 1, No. 18, 1890-1891: in preparing the text for the press, Engels met the opposition on the part of the German Social-Democratic leaders and had to agree to certain changes and omissions in the text. This edition translates the complete original text written by Marx.

¹⁶ *Ivi*, p. 27.

¹⁷ *Ibidem*.

*That the workers desire to establish the conditions for cooperative production on a social scale, and first of all on a national scale, in their own country, only means that they are working to revolutionise the present conditions of production, and it has nothing in common with the foundation of cooperative societies with state aid. But as far as the present cooperative societies are concerned, they are of value only in so far as they are the independent creations of the workers and not protégés either of the governments or of the bourgeois.*¹⁸

If freedom consists in converting the State from an organ superimposed upon society into one completely subordinate to it and if forms of the state are more or less free to the extent that they restrict the “freedom” of the state, it has no sense to strive for the free state and, at the same time, for the free society: this aim does nothing less than invert the relation between social structure and its superstructure.

At this regard, it is not enough recognizing that labour is the source of all wealth and all culture: there is a substantial difference between human labour power, that is a force of nature, and the instruments and subjects which make possible labour itself. By taking no interest in the material conditions through which the labour is the source of all wealth and all culture, Marx says, a socialist programme would pass over in silence also the *conditions* that alone give meaning to the words which introduce the first article of the Gotha Programme. Labour becomes the source of use values just because from the beginning the man behaves as an owner towards nature and all instruments and subjects of labour provided by her: treating nature as belonging to him, his labour becomes the source of use values and, therefore, also of wealth. Omitting this substantial point, there is the risk to ascribe supernatural creative power to labour and, then, to disregard

*that precisely from the fact that the man who possesses no other property than his labour power must, in all conditions of society and culture, be the slave of other men who have made themselves the owners of their material conditions of labour. He can work with only their permission, hence live only with their permission.*¹⁹

Equally unacceptable is the phrase of the draft which points out the capitalist class as the only one owner of the instruments of production: indeed, instruments of labour are the monopoly of the capitalist and the landowners, since that the monopoly of property in land is even the basis of the monopoly of capital. Although in England the capitalist was not usually the owner of the land on which his factory stood, such omission was due to Lassalle's attack only against the capitalistic class and not against the landowners. Not casually, this correction is directly linked to another:

¹⁸ *Ivi*, p. 24.

¹⁹ *Ivi*, p. 11.

instead of indicating – like in the *Communist Manifesto* – the bourgeoisie as a revolutionary class relatively to the feudal lords and the lower middle class who would like to preserve social positions and their correspondent obsolete modes of production, the fourth article of the Gotha's draft conceives it as one reactionary mass together with them. On one hand, the proletariat is revolutionary relatively to the bourgeoisie because it grows up on the basis of large scale-industry and tries to transform the capitalistic structure of production against bourgeoisie claims. On the other hand, the Manifesto was very clear in adding to this that the lower middle class is becoming revolutionary because of its close transfer into proletariat.

Linked with the first article of the Gotha Programme, the third one conceives the emancipation of labour as the result of the promotion of the instruments of labour to the common property of society and it asks for the cooperative regulation of the total labour with a fair distribution of the proceeds of labour. Such a correction of the Rules of the International was a clear example of the Lassallean influence on the Gotha draft:

Do not the bourgeois assert that the present-day distribution is “fair”? And is it not, in fact, the only “fair” distribution on the basis of the present-day mode of production? Are economic relations regulated by legal conceptions or do not, on the contrary, legal relations arise from economic ones? Have not also the socialist sectarians the most varied notions about “fair” distributions?²⁰

Marx cannot accept the distortion of what he calls “the realistic outlook” by means of ideological non-sense about right:

any distribution whatever of the means of consumption is only a consequence of the distribution of the conditions of production themselves. The latter distribution, however, is a feature of the mode of production itself. The capitalist mode of production, for example, rests on the fact that the material conditions of productions are in the hands of non-workers in the form of property in capital and land, while the masses are only owners of the personal condition of production, of labour power. If the elements of production are so distributed, then the present-day distribution of the means of consumption results automatically. If the material conditions of production are the co-operative property of the workers themselves, then there likewise results a distribution of the means of consumption different from the present one. Vulgar socialism (and from it in turn a section of the democracy) has taken over from the bourgeois economists the consideration and treatment of distribution as independent of mode of production and hence the presentation of socialism as turning principally on distribution. After the real relation has long

²⁰ Ivi, p. 14.

*been clear, why retrogress again?*²¹

According to the development's stage of the communist society, the producer receives back from society – after the deductions have been made – exactly what it gives to it in another form: in a such society, a given amount of labour in one form is exchanged for an equal amount of labour in another form, so that

*[...] equal right here is still in principle – bourgeois right, although principle and practise are no longer at loggerheads, while the exchange of equivalents in commodity exchange only exists on the average and not in the individual case.*²²

In other words, the equality consists in the fact that measurement is made with an equal standard provided by individual labour: in brief,

*this equal right is an unequal right for unequal labour. It recognizes no class differences, because everyone is only a worker like everyone else; but it tacitly recognises unequal individual endowment and thus productive capacity as natural privileges. It is therefore, a right of inequality, in its content, like every right.*²³

The concept of right itself implies the application of an equal standard which cannot recognize individual peculiarities:

*[...] unequal individuals (and they would not be different individuals if they were not unequal) are measurable only by an equal standard in so far as they are brought under an equal point of view, are taken from one definite side only, for instance, in the present case, are regarded only as workers and nothing more is seen in them, everything else being ignored. Further, one worker is married, another not; one has more children than another, and so on. To avoid all these defects, right instead of being equal would have to be unequal.*²⁴

After all, Marx admits that similar defeats are inevitable in the first phase of communist society as it has just emerged after prolonged birth pangs from capitalist society, since that right and cultural development depend on the economic structure of society.

²¹ *Ivi*, p. 18.

²² *Ivi*, p. 17.

²³ *Ibidem*.

²⁴ *Ibidem*.

*What we have to deal with here is a communist society, not as it has developed on its own foundations, but, on the contrary, just as it emerges from capitalist society; which is thus in every respect, economically, morally and intellectually, still stamped with the birth marks of the old society from whose womb it emerges.*²⁵

Only after the end of the enslaving subordination of the individual to the division of labour – and, then, the conflict between mental and physical labour;

*after labour has become not only a means of life but life's prime want; after the productive forces have also increased with the all round development of the individual, and all the springs of cooperative wealth flow more abundantly – only then can the narrow horizon of bourgeois right be crossed in its entirety and society inscribe on its banners: From each according to his ability, to each according to his needs.*²⁶

Beyond Dominion: Beyond or Before Justice?

A negative account of justice has to start from what I call “asymmetrical relations of power”: by this expression I mean to refer to those social conditions that legitimate unequal redistributions of symbolic and material resources in light of values or principles, that – although they are prerogative of social groups which already benefit of them –, claim to equally guarantee every social member's rights of a certain community. At this regard, Marx's critique of capitalism provides a typical example of what these kinds of social relations are. Through their surplus labour – which is nothing but unpaid labour –, in a capitalistic society workers are constrained to produce more than they would do to support themselves and their families: the consequence of this super-labour is that one class of persons is able to appropriate the social surplus of others, simply in virtue of their position in the social system.

In Marx's analysis, classes are the reference's minimal term because mode of production moulds the whole social system in which they play an economic role and occupy a well-defined position. Proletariat does not only represent the subject of exploitative working conditions involved in capitalism: it is the historical actor of its substitution with communist society, anticipated by a period of the revolutionary transformation within which the state will can be nothing but the revolutionary dictatorship of the proletariat.

As any previous social system, capitalism produces by itself the social forces delegated to its

²⁵ Marx K., *Critique of the Gotha Programme*, cit., p. 16.

²⁶ *Ivi*, p. 18.

own overcoming; nevertheless, capitalism differs from any previous historical period because it is also the last one characterized by class' antagonism between dominant and dominated people. In Agnes Heller's words, «the most alienated stage of history is also the last»²⁷. In fact, if Marx had prospected communism in a different way, he would be constrained to admit that not all valid norms in a capitalist society are an ideological tool in dominant class' hands. Emancipation of the proletariat would coincide with the emancipation of humankind: in a Rawlsian vocabulary, communist revolution would actualise a human community within there would not be any need to recur again to the difference principle. This would happen not because the communism would realise the end of any inequality; rather, a communist society cannot but take seriously the unequal needs of people. Nevertheless, no one passage of Marxian text seems to ground capitalism's criticism in light of the communist principle according to which it is requested “From each according to his ability, to each according to his needs”. This kind of principle seems to describe the working way of a communist society, rather than an ideal criterion in light of which it is possible to criticize capitalistic societies.

One 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. Of course the distinction between moral and non-moral goods is never explicitly drawn by Marx, but it is a familiar one (both in philosophy and in everyday life) and it is not implausible to think that Marx might be tacitly aware of it and even make significant use of it without consciously attending to it..*²⁸

On the other hand, other writers hold that Marx think that capitalism is unjust, even if only implicitly and according to a non capitalistic conception of justice²⁹: 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. An able-bodied capitalist who receives an income without working represents an unjustified violation of the contribution principle – a violation, that is, which is not justified by the needs principle. By contrast, an invalid who receives welfare aid without contributing anything in return represents a violation of the

²⁷ Heller A., *Beyond Justice*, Basil Blackwell, Oxford, 1987, p. 106.

²⁸ Wood A., *Karl Marx*, Routledge, London, 2004 (II ed.), p. 129.

²⁹ See G. A. Cohen's Review of Allen Wood's *Karl Marx*, in «Mind», July 1983, pp. 440-445.

*contribution principle that is justified by the needs principle. Hence Marx had a hierarchical theory of justice, by which the contribution principle provides a second-best criterion when the needs principle is not yet historically ripe for application. Capitalist exploitation is doubly unjust, since it obeys neither principle. The “equal right” of the first stage of communism, is also unjust, but less so, since only the needs principle is violated.*³⁰

Letting apart from the present discussion this double and opposed interpretations, 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 to 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.*³¹

A communist society would lack circumstances of justice which do not cease to render topical this term. Once showed the analogies between his idea of property-owning democracy and some legitimate objections of the socialist tradition towards liberalism, in the *Lectures on the History of Political Philosophy*³² Rawls himself cannot but admit the substantial difference between his idea of well-ordered society of justice as fairness and Marx's idea of a full communist society:

this society seems to be one beyond justice in the sense that the circumstances that give rise to the problem of distributive justice are surpassed, and citizens need not, and are not, concerned with it in everyday life. Whereas justice as fairness assumes that, given the general facts of the political sociology of democratic regimes (e.g. the fact of reasonable pluralism), the principles and political virtues falling under justice of various kind will always play a role in public political life. The evanescence of justice, even of distributive justice, is not possible, nor, it

³⁰ Elster J., *Making Sense of Marx*, Cambridge University Press, Cambridge, 1985, p. 228.

³¹ Heller A., *Beyond Justice*, cit., p. 223.

³² Rawls J., *Lectures on the History of Political Philosophy*, edited by Freeman S., Harvard University Press, Cambridge (Mass.), 2007, pp. 320-321. The main meeting points between Rawlsian idea of property-owning democracy and Marx's proposal of a communist society concerns the protection of free and equal citizens' high-order interests by the basic rights and interests, the assurance of a fair opportunity to exert political influence to all citizens (whatever their social position), the protection of the so called positive liberties through fair equality of opportunity and the difference principle and, finally, the dissolution of the narrowing and demeaning features of the division of labour once the institutions of a property owning democracy have been realized.

*seems, is it desirable.*³³

According to Rawls and to my opinion, Marx's purpose of a society beyond justice has to be refused because it is impossible to bring back every expression of physical and symbolic violence to modes of production: a negative conception of justice cannot avail itself – above all in the contemporary, complex, world – of the identification of only one source of every possible injustice, as capitalism was in Marx's standpoint. Not being able to ensure that any human community can be forever immunized from any new injustice within its borders, the society hoped for by a negative conception of justice cannot be conceived beyond, but rather before the realization of justice itself.

This requires to avoid or prevent humiliating phenomena or conditions without disposing of a omni-lateral explanation of the sources of injustice. At the same time, this negative conception of justice shares with Marx the proposal to overcome any phenomenon of dominion: instead of pursuing an ideal theory of “perfect justice”, my proposal consists in focusing the attention on present conditions of humiliation and exploitation, since that their overcoming describes a constitutive part of the concept of justice. On one hand, the attempt to fully recognize the sense of injustice experienced by people in contemporary societies cannot but share Rawlsian insight about the not-desirableness of a society beyond justice. Nevertheless, differently from Rawlsian conception of “justice as fairness”, asymmetrical relations of power are prior than any principle of justice in light of which social life would be made subject of criticism.

Indeed, Marxian interpretation of ideology gives back to critical theory of today societies the possibility to criticize its arrangements in light of contradictions met by its principles of justice and rights themselves: since that these principles and rights do not ensure the just conditions they pretend to protect or gain, the source of social criticism can be found in an internal point of view, without referring itself to any sort of universal principle of justice, which every citizen is request to accept in order to live in a “well-ordered society”.

*[...] 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. But we have not yet captured the radical character of Marx's criticism until we add the charge that this principle of free and equal exchange between the buyer and the seller of labour power is not only unsatisfied, but unsatisfiable.*³⁴

After all, if this relation was not unsatisfiable, it could be possible to talk about justice in a capitalist society. The Marxian distinction between economical structure and (ideological)

³³ Rawls J., *Lectures on the History of Political Philosophy*, cit., pp. 321-322.

³⁴ Buchanan A.E., *Marx and Justice. The radical Critique of Liberalism*, Methuen, London, 1982, p. 71.

superstructure inverts the dependence relationship between capitalism and justice: it is not possible to conceive justice as a remedy to capitalism, since that capitalism requires the notion of justice in order to justify its mode of production. Internal criticism of capitalism plays just a secondary role: it serves to destruct the arguments by which bourgeois ideology attempts to ground capitalism as a just social order:

Further, Marx assigns no positive, constructive role to conceptions of justice or rights in his account of how the proletariat becomes motivated to effect the revolutionary transformation of society. His attacks on the confused exhortations of the moralizing socialists have only the destructive aim of clearing the way for an appeal to proletarian self-interest.³⁵

At this regard, Marx 's analysis of capitalism can be conceived as beyond injustices: this is possible only accepting that the meaning of injustice does not depend from the legal definition of justice; capitalist exploitation indicates an injustice which reserves to be overcome as such, even though it is not possible to associate the word “injustice” to exploitative phenomena in light of capitalist notion of justice. In this interpretation, the judgement of capitalism as unjust because of its exploitative mode of production does not require any positive principle of justice, since that it is criticize-able in light of ideological justifications provided by it in order to legitimize the subsistence of exploitation itself.

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. This internal criticism is only one obvious application of one of Marx's most distinctive and fruitful contributions to social theory: the insight that distorted beliefs about what belongs to the nature of various individuals play an important role in the ideological justification of repressive social institutions.³⁶

According to Buchanan's interpretation, those authors who have concluded that Marx did not primarily criticize capitalism for its distributive injustices were correct in their conclusion, but for wrong reasons: Marx did not think that capitalism was just according to its own standard of justice,

³⁵ *Ivi*, p. 75.

³⁶ *Ivi*, p. 56.

even if he thought that it was the only standard of justice appropriate to it.

Leonard Mazzone

Doctoral School in Philosophy
Department of Philosophy, University of Studies of Florence
Via Bolognese, 52 – 50139 Firenze
leonardmazzone@libero.it/+393484622686