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The Norm of Equality in Amartya Sen's Idea of Justice: From "Equality of What?" to "Why Equality?"

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Abstract

This paper focuses on Amartya Sen's conception of equality regarding modern theories of justice. Starting from a question he considers crucial in this context, "Equality of what?", which involves a conception of equality in terms of "space", we move to the importance of a related issue: "Why equality?", which refers to a more general idea of equality, implicit in Sen's work. The paper sheds light on this distinction and more precisely on the second acceptance of equality, deeply connected to the impartiality requirement of justice. Furthermore, Sen's account of impartiality reveals the relevance of the transcendental approach for his own idea of justice, although he rejects it in favour of the comparative one.

Key-words

Equality, Amartya Sen, Normative theories, Impartiality, Justice

JEL Classification: A13, D63

1. Introduction

The issue of equality has been established as a fundamental one in the field of social justice and more broadly for modern political theory. It is indeed widely debated and the discussion mainly concerns *what* content equality should adopt: equality of resources, of chances, of capabilities, etc., are some of the possible answers to the question "Equality of what?", raised by Amartya Sen firstly in his eponymous Tanner Lecture (1979). This question puts forward the concept of "space", by precisely seeking, as an answer, the right "space" of equality, that is to say the specific content of equality which is to be promoted by a theory of justice to realize fairness in a society. The "space" of equality also refers to the criterion which is to be adopted in order to compare and evaluate people's social situations, on which we rely to judge the person's advantages and disadvantages. Among others, Fleurbaey (1995) also pointed out the importance of the issue "Equality of What?", indicating that "the bulk of the debate (...) deals with what variables ought to be submitted for selection and how this selection ought to be carried out" (p. 25).

The notion of "space" is crucial to the purpose of this paper: it denotes a specific characteristic of modern social justice theories, as Sen suggests: they all take equality into consideration but in a particular way, seeking for one specific space in which it should be realized, allowing at the same time inequalities to come out in some other spaces. As Sen puts it:

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

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

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

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

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

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

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

The article first tries to shed light on the distinction between “equality of what” and “why equality”, through the analysis of both questions and Sen’s position regarding it, leading to separate a *particular* form of equality – the space – from a *general* one – related to the demand for impartiality. Although Sen assumes that seeking an answer to “Why equality?” is unnecessary, if not useless, it appears that this fundamental issue is actually one of his preoccupations. Second, the analysis refers to his conception of equality as the expression of impartiality, which can actually be taken as an answer to the question “Why equality?” in itself. Impartiality is of first importance for Sen, as he argues that without this requirement being met, a normative theory cannot be viable (2009, p. 353). Finally, the

analysis of the distinction between “equality of what” and “why equality” integrates some aspects of the discussion concerning the transcendental and the comparative approaches. Indeed, the presence of a general, even absolute form of equality (“why equality”), which can be seen as an ideal, could denote the relevance of a transcendental dimension in Sen’s own idea of justice, although he explicitly rejects its interest, saying that this perspective is “neither necessary nor sufficient” (*Ibid.*, p. 41).

Regarding the existing literature, most of the studies which have been led on Sen’s works focus on the concept of capability, or on the discussion concerning the transcendental and the comparative approaches, which focuses mainly on Sen’s reject of the transcendental tradition and its relation to John Rawls, but also to Adam Smith through the analysis of Sen’s use of the concept of the impartial spectator – for instance Gilardone (2015) on Rawls, and Bréban, Gilardone and Walraevens (2015) on Smith. Some works have shown the relevance of the transcendental perspective for Sen’s own idea of justice relying on diverse arguments: Ege, Igersheim and Le Chapelain (2016) claim that “a comparative approach cannot exist by itself without a transcendental dimension”, especially as “a transcendental dimension is the *condition of possibility* of any comparative theory” (p. 523). Kandil (2010) showed the reciprocal complementarity of both approaches, insisting on the necessity of a “transcendental anchoring” for the comparative approach, favouring a “synthetic perspective” (p. 213). Gamel (2010) and Robeyns (2012) also argued in this sense, and so do I in this paper, by advancing a new argument focusing on Sen’s specific conception of impartiality as an answer to “Why equality?”, revealing its absolute and *a priori* nature, but also its universal character as related to the issue of human rights. However, Sen’s account of the wide concept of equality has been almost only discussed as linked to the concept of capability, so, as related to the question “Equality of what?”. For instance, Fleurbaey (1995) has provided a consistent account of this issue, and Hausman and McPherson (1996) explored some of its traditional answers (notably equality of resources, welfare and capabilities), but also showed how the economic analysis relies on moral assumptions, and dedicated one section to the question “Why equalize?” (p. 177). This paper thus tends to deepen the understanding and highlight the fundamental nature of “Why equality?”, while contributing to a literature which has raised the idea that equality, in Sen’s work specifically, can be seen in a general perspective, as a universal moral prerequisite. Kane (1996) for instance connects the concepts of non-discrimination and equality of treatment, as being both inherent to justice: “the connection between justice and equality is, on this view, a logically necessary one: analyse the concept of justice and you will discover within it the concept of equality” (p. 375). He highlights Sen’s claim about the necessity of equality as a fundamental principle of justice: “a principle of presumptive equality forms the shared background of all the major theories of social justice and [...] this principle is implicit in the necessary impartiality of ethical reasoning” (p. 388). Wall (2007) raises the *basic equality* claim, whose principle is “each has a life that is equally morally important” (p. 423), as providing support for democracy. Knight (2009) asserts, just as Sen does, that what essentially matters is to answer the question “equality of what?” (p.

345), but still considers that Sen's conception of equality in terms of space "starts from an assumption of the moral equality of human beings" (p. 403). These studies do not however focus specifically on the primordial aspect of "why equality" regarding modern theories of justice, and the role it has for Sen's theory. I propose to deepen these positions in order to show what such a conception of equality implies, notably regarding the discussion on the transcendental and comparative approaches.

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

2. From "Equality of What" to "Why Equality?": Two forms of equality

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

2.1. "Equality of what?": a central concern for social justice in Sen's

"Equality of what?" is to be considered as the central question any normative theory on ethical judgements tends to answer, determining the object of justice, so as Sen presents it. He first settled the issue in his eponymous Tanner Lecture (1979) – which was published one year after ("Equality of what?", 1980) – and later developed it in his book *Inequality Reexamined* (1992). However, both writings do not focus exactly on the same issues and this difference is characteristic of the evolution of Sen's thought, notably concerning his defence of capabilities as the relevant answer. His strong concern for this question refers to the will of identifying the aspect of human lives that must be equalized in order to support a fair society, but also the criterion on which to rely in order to detect and evaluate inequalities in real social situations. This aspect is central to any conception of social justice:

The central question in the analysis and assessment of equality is, I argue here, "equality of *what?*" I also argue that a common characteristic of virtually all the approaches to the ethics of social

arrangements that have stood the test of time is to want equality of *something*—something that has an important place in the particular theory. (Sen, 1992, p.ix)

Seeking an answer to “Equality of what?” thus involves promoting one specific “something”, namely a content of equality – for instance, resources, capabilities, gender, etc. The content refers to what Sen calls a “space of equality” and it appears that a large possibility of spaces deserves attention and can serve as the basis for a normative theory. The space of equality promoted by a theory is the answer it gives to the question “Equality of what?”. Now, Sen builds his own conception of equality in terms of space in reaction to three main visions as he explains in his 1979 lecture. From revealing the shortcomings of utilitarian, total utility and Rawlsian equality¹, he draws his concept of “basic capabilities” and defends it as the right space of equality – basic capabilities referring to an extended form of Rawlsian “social goods”, focusing on the effective possibility of people to choose between different options in order to realize the type of life they value. However, our purpose here is not to assess whether “basic capability equality” constitutes the right space to be promoted for social justice or not, but to understand the concept of space itself and its importance regarding ethical judgements and normative theories. Moreover, Sen’s own conception in terms of “basic capabilities” has actually evolved towards equality in terms of “capabilities” only², and he finally admitted in his last book (2009), that capabilities are not to be regarded as the absolute relevant space in that it presents shortcomings too³.

The notion of space in Sen’s conception is then central for our research: it reveals the dual dimension of equality, as both a *general* concept every normative theory relies on and a *particular* one in the sense that each theory promotes a specific content of equality. It thus denotes a typical tendency for contemporary social justice theories: they all take equality into consideration, but as seeking for one *particular* space in which it should be realized, allowing at the same time inequalities to raise legitimately in some others⁴. According to Sen, a normative theory cannot be considered as complete unless it formulates an appropriate answer to “Equality of what?”, which makes it a major concern – the “central question” (1992, p. ix). The “space of equality”, also referred by as “equality of something” (2009, p. 291) constitutes the particular content given to equality in one specific theory,

¹ His critique is essentially addressed against their lack of concern for the “fundamental diversity of human beings” (Sen, 1980, p. 202) and the limitation of the conceptions thus involved.

² Especially in order to avoid the “culture-dependent” aspect of basic capabilities, in the “weighting of different capabilities.” (*Ibid.*, p. 219)

³ Notably as it does not allow reflecting the procedural dimension of freedom, the process of choice in itself: “A theory of justice – or more generally an adequate theory of normative social choice – has to be alive to both the fairness of the processes involved and to the equity and efficiency of the substantive opportunities that people can enjoy. Capability is, in fact, no more than a perspective in terms of which the advantages and disadvantages of a person can be reasonably assessed.” (Sen, 2009, pp. 296-297). On this topic, see notably Baujard and Gilardone, 2015.

⁴ “The demand for equality in terms of one variable entails that the theory concerned may have to be non-egalitarian with respect to another variable, since the two perspectives can, quite possibly, conflict.” (Sen, 1992, p. ix)

and thus varies from one conception to another. This “something” refers to one theory’s central aspect, meaning social justice has always something to deal with equality, but in a particular form of application. Sen sometimes calls it the “focal variable”, as the specific variable on which the process of equalization must apply:

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

Now, in Sen’s conception, social justice is mainly about the assessment of inequalities, making the chosen focal variable the criterion from which social situations must be judged. This notion of space is also taken into consideration by many other modern theorists of social justice and referred by as the “*equalisandum*” notably defined as the “preferred concept of morally relevant factors to be equalized among different individuals” (Hirose, 2015, pp. 2-3), or else “an *equalisandum* claim specifies that which ought to be equalized, what, that is, people should be rendered equal in” (Cohen, 2011, p.5). Authors such as Cohen, Fleurbaey, Roemer, etc., have used it to treat the issue “Equality of What?”, developing their own account of the *equalisandum*, according to their own views on egalitarianism.

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

2.2. “Why equality?”: a question of a less central concern in Sen’s

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

“Why equality?” refers to a general questioning that tends to explain the necessity of some form of equality for any normative theory, so that it actually appears as preceding “Equality of what?”,

and so as the basis to treat this second issue. Indeed, I argue that it is to be situated at a more general level of thinking, targeting the reasons for the necessity of equality, which makes equality an unavoidable principle for every contemporary theory. And this is precisely what Sen implicitly suggests, as he establishes it as a norm from which any ethical judgement should be derived. He indeed shows that even those opposed to an egalitarian conception rely on it: “What is perhaps more significant is that equality is demanded in some basic form even by those who are typically seen as having disputed the ‘case for equality’ and expressed scepticism about the central importance of ‘distributive justice’” (2009, p.291), so that there is, in Sen’s an implicit commitment for the necessity of some *general* form of equality in any modern normative theory, which makes it a constitutional principle of justice.

Now, this idea of “basic form of equality”, which I shall call “*general equality*” for the rest of the argumentation, is to be related to the question “Why equality?”, and regarded as distinct from the particular type of equality put forward by the notion of “space” and the question “Equality of what?”. It is general in that it appears as a formal concept: as an absolute form of equality, it must not be realized as such; it only acts as an abstract principle that directs the development of justice, being its *condition of possibility*. Indeed, Sen affirms that the egalitarian formula is to be achieved only within the particular “space”: “in each theory equality *is* sought in some ‘space’ (that is, in terms of some variables related to respective persons), a space that is seen as having a central role in that theory” (*Ibid.*, p. 292). This is one of the reasons why general equality is only implicitly defended by Sen: social justice must focus on “Equality of what?” to be effective and provide fair social arrangements – “Why equality?” being a question of another level of thought according to him:

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

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

also as it reflects a statement about contemporary societies and a new paradigm of justice as based on the principle of impartiality, which appears inherent to justice, at least since Rawls' theory (1971)⁵.

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

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

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

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

3. "Why Equality?" and the impartiality requirement of justice: A general conception of equality

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

⁵ In *A Theory of Justice*, John Rawls asserts impartiality as the necessary and sufficient condition for the elaboration of fair principles of justice, through the device of the veil of ignorance in his original position (1999, pp.16-18; p. 315; p. 453).

of general equality so that this normative imperative of impartiality constitutes his answer to the question “Why equality”.

3.1. *Impartiality as the normative basis for any theory of justice*

The conception of equality as a fundamental requirement for any theory of justice is to be found mainly in Sen’s *Idea of Justice*: the “egalitarian formula” is necessary in the sense that “in the absence of such a requirement a normative theory would be arbitrary and biased. There seems to be a recognition here of the need for impartiality in some form for the viability of a theory”⁶ (Sen, 2009, p. 293). The close relation between impartiality and equality is there assumed and expressed in terms of interdependency: Sen moves swiftly from one concept onto the other without transition, asserting their almost synonymic attitude. The necessity of impartiality as the basis of a theory of justice is here settled as a means of justification: without this requirement being met, one cannot speak about “justice” according to Sen, who thus features a system where the terms equality, impartiality and justice answer reciprocally to each other, are equivalent.

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

General equality thus refers to this conception of impartiality and intervenes at a normative level: “Why equality?” promotes an abstract form of equality, even absolute, but which is not to be found in reality. It represents the *condition of possibility* of justice, not its goal. Particular equality, or equality in the chosen space however, is then to be considered as the *object* of justice and can in this sense differ from one theory to another, whereas general equality is constant and relates to a transcendental perspective – particular equality allows comparisons.

⁶ Sen already acknowledged in 1992 that “even before a specific space is chosen, the general requirement of the need to value equality in some space that is seen to be particularly important is not an empty demand. This relates to the discipline imposed by the need for some impartiality, some form of equal concern. At the very least it is a requirement of scrutiny of the basis of the proposed evaluative system. (...) Even at this general level, equality is a substantive and substantial requirement” (Sen, 1992, p.24) – especially as a means of justification.

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

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

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

3.2. Of Equal consideration: the issue of recognition

The close link between equality and impartiality reveals that general equality is, as a conditional norm for ethical judgements, related to the principle of treating each agent or member of a community of justice and its interests with an equal attention, disregarding the individuals’ own features and abilities (in an *a priori* perspective, which precisely makes it formal). The requirement of impartiality, which relates to the one of equal consideration, allows avoiding the pitfalls of arbitrariness, aiming at the same time to give everyone a voice, an equal power of asserting their interests, leading to a conception

of equality in formal political terms. The importance of impartiality regarding modern theories of justice reveals a new paradigm that puts forward equality as the central norm of justice.

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

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

He expresses here the foundations of the idea of equal treatment, or formal equality, as being based upon a "universalist demand" (*Ibid.*). This demand implies to include each of the members of one community of justice - and even perhaps beyond, every man as a reasonable being - within a global sphere where all persons' moral and political capacities are equally acknowledged. Now, this idea is directly connected to Kant's work, as Sen explains⁷. And relying on Kant involves for Sen to take into account the issue of reason, leading to consider a strict moral equality between any being supplied with it, the goal being the guarantee of people's autonomy (namely their capacity to choose their own principles of life, to have their own conception of the good). Besides, Sen acknowledges Kant's role regarding the contemporary vision of impartiality: "The insistence on impartiality in contemporary moral and political philosophy reflects, to a great extent, a strong Kantian influence" (*Ibid.*, p. 124), suggesting its deep link to equality of consideration.

Then, on the basis of impartiality, a theory of justice aims at instituting a community of morally and politically equal subjects, that is to say, to whom the same faculty of having a conception of the good and of choosing for themselves their own principles and the same capacity to assert this

⁷ "No one perhaps did as much as Immanuel Kant to make that universalist demand understood, including principles of the kind that are captured in the often-repeated Kantian formulation." (Sen, 2009, pp. 117-118)

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

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

Finally, this "egalitarian formula" seems to be properly related to the context of contemporary social justice theories: it is linked to a will of impartiality implying a certain universalism, just as the idea of universality of inclusion (Wollstonecraft). And it seems that Sen also is demanding for a structure of general and global equality in the consideration of each member of a community of justice, despite his conception in terms of "space". Now, it is precisely this structure of equality (in the recognition and the treatment of the interests of each) that actualizes the principle of impartiality necessary to any theory of justice, for it to be viable. So we see why equality has been raised by most of the theorists to the level of a necessary norm: it is now an omnipresent value in political philosophy, and especially as related to the issue of liberty.

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

4. Impartiality and Transcendence

In this section, I assume that general equality could be included in what Sen calls a “transcendental approach”, which aims at identifying the ideal principles and institutions of justice (Sen, 2009, pp.5-6), as absolute principles that would be valid for everyone, and which is opposed to the comparative method – that Sen claims to defend – which is “concerned with social realizations” (*Ibid.*, p. 7), with the assessment of existing inequalities. In order to show this, I will notably rely on his argument concerning “open impartiality”, as a relevant tool for public debate and the determination of the principles of justice, or rather the criteria for the evaluation of inequalities. Now, as already noticed, Sen explicitly rejects the transcendental approach. However, many articles in the recent literature tend to show that this position is not as clear and definitive as it appears (for instance Gamel, 2010; Kandil, 2010; Valentini, 2011; Robeyns, 2012; Ege, Igersheim and Le Chapelain, 2013; 2016), for different reasons. My argument is to show that impartiality in Sen’s conception, as related to general equality, could be qualified of transcendental in the sense that it is inherent to the idea of justice, and should thus not be limited in application to the only frame of the chosen space. To do so, I start with the distinction Sen makes between “open” and “closed” impartiality, for which he refers mainly to Rawls’s conception, and then examine how the way he introduces the concept of human rights as conditioned by impartiality provides evidence in favour of the relevance of the transcendental approach for his own idea of justice.

4.1. *Open and closed impartiality*

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

Sen’s “Open impartiality” involves the idea to open the imperative of impartiality onto a form of global community of justice. It is based on his analysis of the Smithian “impartial spectator”⁸, which leads him to assert that “the idea of addressing the issue of fairness through the device of the Smithian impartial spectator allows some possibilities that are not readily available in the contractarian line of reasoning used by Rawls” (Sen, 2009, p. 70). So he builds open impartiality under the influence of Smith but especially in order to overcome what he considers to be the shortcomings of Rawls’s theory of impartiality: he asks whether “the exercise of impartiality – or fairness – [is] to be confined

⁸ “One of Smith’s major methodological concerns is the need to invoke a wide variety of viewpoints and outlooks based on diverse experiences from far and near, rather than remaining contented with encounters – actual or counterfactual – with others living in the same cultural and social milieu, and with the same kind of experiences, prejudices and convictions about what is reasonable and what is not, and even beliefs about what is feasible and what is not.” (Sen, 2009, p. 45). On Sen’s use of the Smithian Impartial Spectator, see Bréban, Gilardone and Walraevens (2014).

within the borders of a country with a shared sovereignty, or within a culture with shared attitudes and priorities” (*Ibid.*, p. 402). And this question precisely intervenes in the frame of his critique of the Rawlsian veil of ignorance, for which impartiality is according to him submitted to “parochialism”, meaning the principles of justice determined in the “original position” are necessarily linked to the political tradition of the considered community, which is then the only frame of debate and decision. Sen criticizes this reasoning process that he calls “closed impartiality”, as rolled out in the restricted area of the political and social conceptions mainly accepted within the limits of one particular community⁹. He rather supports what he calls “open impartiality”, as an “interactive process of critical scrutiny, open to arguments coming from others and sensitive to the relevant information that can be obtained” (*Ibid.*, pp. 358-359), that is to say a reasoning process that goes over political, cultural and geographical borders - a tool for a broad public debate¹⁰.

And actually Sen links the question of impartiality to the one of human rights. Indeed, impartiality refers to the ability to take into account the interests of each individual, avoiding any type of discrimination, at a general, formal level. Now this also relates to the issue of global justice: how to determine a global frame in which the interests of the whole humanity are taken equally into account? Open impartiality thus allows avoiding parochialism, and this appears as necessary to legitimate any principle of justice that would tend to assume the role of a human right, in the sense it would concern every human being, each individual, without any distinction, as based on the principle of formal equality. Open impartiality appears then as a relevant tool to express the egalitarian norm in the broadest way. However, as related to this issue, the distinction between closed and open impartiality is not that relevant to us as it is more a matter of scale (regarding the considered community of justice – global, national, regional, cultural...), even though it is only open impartiality, as Sen puts it, that can support a universal application of impartiality.

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

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

⁹ Valentini (2011) however argued that Sen’s account of the Rawlsian theory as transcendental institutionalism is misguided in that “for Rawls and the Rawlsians, the process of theorizing about justice is inherently dynamic, and open-ended” (p.314).

¹⁰ On the influence of Rawls on Sen’s conception of impartiality, see also Gilardone (2015, pp. 213-220).

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

4.2. Open impartiality and human rights: the relevance of the transcendental dimension for Sen’s approach

Sen considers open impartiality – as based on the concept of the impartial spectator – as coming under the scope of an exclusively comparative approach of justice¹¹, whereas he still defends a view according to which open impartiality is the foundation for human rights, which actually seem to rely on a transcendental approach in the sense that they require one shared fundamental principle in Sen’s conception. So here, we do not consider Sen’s conception of impartiality as founded on the Smithian impartial spectator but we propose a new possible lighting, in the perspective of general equality, as a conditional principle of justice. And in the end, the distinction he operates between the two approaches does not seem as rigid as he claims, notably regarding his treatment of the notion of human rights, as following:

The notion of human rights builds on our shared humanity. These rights are not derived from the citizenship of any country, or the membership of any nation, but are presumed to be claims or entitlements of every human being. They differ, therefore, from constitutionally created rights guaranteed for specified people (such as American or French citizens); for example, the human right of a person not to be tortured or subjected to terrorist attacks is affirmed independently of the country of which this person is a citizen, and also is quite irrespective of what the government of that country – or any other – wants to provide or support. (Sen, 2009, p.144)

The notion of “shared humanity” seems to relate to some idea of transcendence and so does the one of human rights as it seeks to reflect what any human being could claim on the ground of his humanity. If we consider the issue of transcendence as being related to the idea that justice relies on some fundamental principle which should apply to any considered situation – namely, in this inquiry, the one of general equality which refers to acknowledging the basic moral nature of every human being as such – then, Sen’s accounts of impartiality as a requirement of justice and of human rights denote the transcendental dimension of his conception of justice. Indeed, Sen states here that human rights *transcend* the notions of citizenship or nationality, in the sense that they are to be found above these limits: they fall under the scope of the essence of justice itself, where justice becomes the

¹¹ Some authors however showed that Sen’s understanding of the Smithian impartial spectator is sometimes misguided (see for instance Shapiro (2011), Ege, Igersheim and Le Chapelain (2013), and Alean Pico (2014)). More specifically Bréban, Gilardone and Walraevens (2015) pointed out the discrepancy between the “abstract” dimension of the Smithian original concept, which is involved in “individual deliberation” and the concrete nature of it in Sen’s interpretation, which projects it in the frame of “collective deliberation”.

possibility for humanity to realize, to actualize itself. In this sense, equality is deeply linked to justice, even inherent to it, as it would seek to settle the conditions for this possibility, from which no one should be left aside. Finally, the existence of an absolute idea of equality in Sen's work is to be found notably in his conception of human rights, where impartiality is taken in its broadest sense, as not taking any borders into account, namely in an "open" perspective. Human rights are independent from the specific dispositions chosen by the different governments of each country and seem to express the absolute conception of equality whereas the specific political constitutions reflect the idea of "space of equality", according to what they promote specifically.

Furthermore, Sen asserts elsewhere the close link between human rights and a strong notion of obligation: "proclamations of human rights, even though stated in the form of recognizing the *existence* of things that are called human rights, are really strong ethical pronouncements as to what *should be done*" (*Ibid.*, p. 357). As "ethical pronouncements", we see how human rights, which appear as a broad expression of justice, go beyond the political boundaries of each state's constitution. We can then assume that the essence of justice is to be found in the concept of human rights where it is expressed as being transcendental, notably regarding the kind of obligation it involves.

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

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

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

Finally, if we consider "transcendental" as not being much about the search for ideal principles of justice but more for fundamental ones, as in a "universalist" approach, then open impartiality and human rights, as in Sen's conception, seem to rely on some transcendence, in that the matter of justice is to avoid any kind of "exclusionary neglect", which makes general equality a relevant principle.

Thus, although Sen claims that we should simply abandon the transcendental approach in favour of the comparative one, we rather see in his views on impartiality and human rights that it is not exactly the case. Moreover, he brings himself a discussion concerning the viability, the feasibility of human rights as fundamental ethical principles, defending the position that such a requirement is not a necessary one: “Human rights can serve as the motivation for many different activities, from legislation and implementation of appropriate laws to enabling help from other people and public agitation against rights violations” (*Ibid.*, p.366), adding that feasibility is not a “necessary condition” for human rights to be viable (*Ibid.*, p. 384). So human rights appear as related to general equality in the sense of a condition for justice. They are abstract and need not to be realized *per se*, as being the principle of something else, just as formal equality frames the determination of the relevant space of equality. Likewise, as seen in an abstract perspective, the transcendental approach does not necessarily tend to a perfect achievement of the principles it grasps. The comparative method can act as an adjustment tool, according to the real situations that are met throughout the world. General equality thus defines an ideal to which justice can tend, a principle that moves the realization of concrete particular dispositions, but not a goal to be completed, contrary to the determined content of equality, the “space”.

5. Concluding remarks

This analysis tried to show both the presence of an absolute, general conception of equality in Sen’s idea of justice, and the relevance of the transcendental dimension for his own approach, although he only implicitly mentions the first and explicitly rejects the second.

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

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