

## The Values of Liberty

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# The Values of Liberty

In all societies, what is just or right is essentially defined in terms of freedoms, rights, powers, means, and the correlative duties and obligations. These items are liberties or can generally be expressed in terms or with concepts of liberty in the broad sense <sup>1</sup>. The social ethic of modernity consists of a specification of these liberties, which excludes inequalities based on family status, and will be presented. Note that incomes, goods, welfare and the like appear as particular or limiting cases: income is purchasing power, one is free to consume, use, exchange, etc., the goods one possesses, and there can be rights to have certain goods or a certain level of welfare (the relations between agents' ends and means will be further considered below). The other items are more explicitly rights, powers or liberties.

But if liberty is so essential, we have better to know what we talk about when we utter this term. Impression, intuition or alleged evi-

dence are of no help, since we know, as scientists, that everything is determined, irrespective of our knowledge or ignorance of the specific causal influences <sup>2</sup>. The answer will turn out to be that liberty is a type of structure of causality: freer is more caused by the will, or by reason (or by other specific parts of the agent). But why should we value a structure of causality? The dozen types of reasons to value freedom that one can observe will be presented. This will include the two polar clusters of liberty as a means of satisfaction (possibly happiness), and of the existential (ontological) value of liberty as a condition for agency (and hence dignity, responsibility, creativity, etc.). These reasons take the reasons to shun freedom into account, and their relevance depends on a number of characteristics of the considered liberty which will be pointed out.

This analysis of liberty will permit us to determine the social optimum and in particular global justice, or macrojustice (different

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\* The Institute for Advanced studies in the Social Sciences, Paris. I wish to thank Daniel Hausman whose comments induced me to state more explicitly and clearly a number of properties and helped me correct the English of the text.

1. Obligation is "no freedom not to", and so on.
2. It seems relevant here to stop short of the discussion of the general concept of causality, which will be fully understood only when the nature of time will be.

from the multifarious cases of microjustice, or local justice). The relevant classification of liberties will distinguish act-freedom, its extension into process-freedom, and means-freedom, which makes precise Marx's intuitive opposition between formal freedom and real freedom ("positive freedom" is a totally different thing, considered in the conclusion along with "negative freedom"). Macrojustice that focusses on individuals' situations ("individualistic") and takes as end values individuals' items that these individuals desire ("respectful") is built up on a triad of priorities consisting of: (1) the respect of basic rights which are act-freedom and have de facto legal priority in liberal-democratic states; (2) the satisfaction of basic needs; and (3) Pareto-efficiency (possibly with "laundered" preferences). The priority of basic rights and basic needs is grounded in their existential value. A certain respect of cultures also has priority. Then distributive justice necessarily has the form of a moral polyarchy whose main problem is the imputation of human assets and liabilities in dividing human capacities into those whose benefits are equalized by sharing the product (for productive capacities) or by compensation, and those whose "natural" or "spontaneous" allocation is endorsed and respected, or, in other words, in defining the domains of equal means-freedom and of process-freedom. The three polar cases consist of: (1) the ideal equalization of the benefits from all resources, including human capacities which include consumptive capacities, transformed for efficiency into "Practical Justice" or leximin in interpersonally comparable and ordinal "fundamental preferences", which is relevant notably when basic needs are not all satisfied or for the alleviations of deep sufferings; (2) at the extreme opposite, full pro-

cess-freedom which requires a notable public sector to remedy market or exchange failures according to "liberal social contracts"; (3) the endorsement of the "natural" allocation of preferences only, which implies equality in consumption goods replaced, for Pareto-efficiency, by the limitations in income inequalities defined by the multidimensional maximin of "efficient super-equality" and by "fixed-duration income equalization". The distributive optimum results from a mix of these three polar principles in proportions which depend on the state of society but are rather clearly defined for each stage and type of development.

Thus, the equality of liberty and its extensions, rather than the sum of utilities and its descent "social welfare", constitutes the rational individualistic way to define what is just or right in society. This view has indeed characterized the modern world for the last two centuries, outside a relatively tiny group of people, all scholars, in English-language philosophy and academic economics, misled by Bentham's purely contingent and political anti-rights ideology<sup>3</sup>.

This text is organized as follows. The next section will explain why rationality requires the basic structure of justice to be *prima facie* equal liberty. This will require the provision of minimal indications about the definition of liberty. I will then present the various characteristics, distinctions and types of liberty that are relevant and essential for the social ethical evaluation. Next, the problem of valuing liberty and the dozen or so broad types of reasons for valuing freedom will be presented. The following will show how the necessary principle of equal liberty determines justice and particularly macrojustice in society: I will successively consider the classifi-

3. See Kolm(1991 a, 1993 a, c, 1994 a, 1995 b, c, 1996 a, b, d, e.)

cation of freedoms most relevant to the theory of justice, the priorities of act-freedoms, basic rights and basic needs, distributive justice determined by the assignment of capacities to the ethical ends of means- or process-freedoms, its three polar cases, the answers to their inefficiencies, and their optimum mix. The final section will discuss two other families of concepts of justice based on process-freedom: social contracts, fundamental insurance and original positions ; and merit, desert and responsibility.

Before the presentation of these questions, a few preliminary remarks may help the reader to situate their necessity and their scope. The value of liberty is considered the essential issue in ethics and in social ethics by many people and by almost all non-communitarian traditions (and not only in the West)<sup>4</sup>. The analyses of specific and particular aspects of this question can understand their own concepts, problems and possible importance only in beginning with situating themselves in the general and deep view of the question of liberty. An operational and nonsuperficial view of freedom necessarily begins, after the consideration of the nature and definition of liberty, with the distinction of the basic characteristics and aspects of freedom and of the reasons to value it ; here, the alternative to distinction is confusion. The present paper draws from this analysis a principal conclusion that lacks neither focus nor importance, since this is the essential of the solution to the question of macrojustice and in particular of distributive justice in society. Finally, nobody who ever *thought* about freedom found it an easy topic, and its difficulty is only matched by its importance. Yet I hope to show that it is not a necessarily mysterious and intractable

topic either, and that minimal reflection in this field can yield major practical conclusions for social ethics.

### The reason for equal freedom

#### *Equal liberty*

The present article is written in a country theoretically ruled by the principle "Liberty, Equality, Fraternity" and whose republican constitutions, starting over two centuries ago, begin with, and give precedence to, the Declaration of the Rights of Man and of the Citizen, and hence begin with, and give precedence to: "Men are free and equal in rights". Indeed, this constitutes the basis of all modern liberal states of law. More generally, liberties and rights have always been the material of the definition of social orders and the issues of political and social struggles, settlements, claims and ideals, and the modern novelty is, rather, claims of the equality of certain of them for all persons, notably irrespective of ascribed or birth statuses. It should be noted that utilitarianism was made the dominant ethic of English political philosophy by Bentham for the exclusively political purpose to fight the American and French revolutionary rights- and freedom-based principles on the ideological battleground. Bentham himself thought that adding pleasures of different persons makes no sense. Utilitarianism later seduced academic economists who turned it into "social welfare". It was never considered beyond these two very limited scholarly circles (the principle "choose A rather than B because individual 1 prefers A to B more than individual 2 prefers B to A" is an occasional criterion of local and partial allocation which generally does not imply differences or additions in utilities)<sup>5</sup>. Yet, the lack

4. See Kolm (1982)

5. This structure is, however, valid in these cases if preferences are sufficiently weak (see Kolm, 1966 e, chapter 14).

of sense of “aggregate happiness or satisfaction” affects the importance neither of individual happiness (the American declaration guarantees the right to “the pursuit of happiness”), nor of Pareto-efficiency: the preamble of the 1789 Declaration asserts that claims based on these rights promote the happiness of all.

Rights should in particular determine the distribution. After stating the basic rights which actualize act-freedom (see below) in its first sixteen articles, the 1789 Declaration faced the distributional issue in its seventeenth and last article. After much hesitation between the right to assistance and the respect of properties (different from the respect for unspecified property of article 2), the deputies chose the latter, that is, full process-freedom (see below) and free exchange. The whole text is thus tilted toward protective and “formal” freedom and away from “real freedom”. However, a right to the satisfaction of basic needs was introduced at the beginning of the ensuing constitution and in the later revolutionary declarations (plus, in the end, at Condorcet’s instigation, the right to free education). These debates have set very neatly the issues of the political and social debates and struggles for the following two centuries (at least).

In the triple motto, fraternity can solve oppositions between liberty and equality in inducing voluntary transfers or restraints. Yet the main relation between liberty and equality is that the principle is an equality of liberty. This, however, can mean very different things, such as equal freedom to keep or exchange unequal properties, or equal *real* freedoms constituted by material means of action and in particular of consumption. Then, since this principle can be interpreted in so many different and opposed ways, it can solve the social ethical question only if one begins by answering the questions: why equality and why liberty?

Equality constitutes the easy part. Rationa-

lity in its normal sense of “for a reason” implies an “equal treatment of equals in the relevant parameters”, given that this reason should also select a single solution among mutually exclusive alternatives. Indeed, an unequal treatment of such equals can have no reason to be chosen rather than a permutation of these treatments among these individuals (notice that selection by lottery should justify the chosen probabilities – such as equal ones – and it does not really constitute a relevant reason and hence it can only be a second best device in case of indivisibilities). If, moreover, the “treatment” of an individual is deemed not to depend on other individuals’ relevant characteristics or treatments, the direct application of a “reason” onto relevantly identical individuals provides identical “treatments”.

But why value liberty? Indeed, if, as scientists, we believe in causality and determination, one might argue that liberty just does not exist. In particular, in “oeconomia” an individual’s “choice” is determined by his preferences and his domain of possibilities. The impression of freedom of the will that we may experience merely rests on an ignorance of certain of our internal causal determinations. Full knowledge of these determinations is impossible, because the *conoscendum* is part of the knower, it has the same degree of complexity, and it is influenced by the information acquired. But this does not prevent us from knowing that we are determined, that our acts, thoughts, tastes, desires, preferences, choices, intentions or projects are determined, as everything else is. Then, can one value ignorance per se? Is liberty diminished by a better knowledge of physiology, psychology or psychoanalysis? At any rate, the impression of liberty neither is liberty nor proves that it exists (see, for instance, the case of gods, spirits or transcendental “selves”). What, then, *is* liberty?

*Defining liberty*

This question turns out to be an “easy” one: liberty is a structure of causality. The age-old and so much discussed dilemma between liberty and determinism turns out to be an elementary misconception. “Free” is an instance of “caused by”, and “freer” is an instance of “more caused by”. It remains to specify the relevant causes and effects. In the core concept of liberty, the effect is an act or an action of an individual, and the cause is this individual’s will or reason. An action is a set of acts with an intention and a meaning (all acts are thus parts of actions). Since reason needs the will in order to implement its conclusions into acts or actions, reason-freedom implies will-freedom and covers a more restricted set of instances. Certain relevant causal influences can be indirect and pass through other parts of the individual (such as in training) or through parts of the external world (such as in tool-making, investment, or commitment), in providing means, conditions, or constraints that are among the causes of the manifestation of later acts. Our present purpose does not make it interesting to extend the concept of liberty to acts that are impulsive, compulsive, reflex or akratic (from *akrasia*, weakness of the will), or to moves caused by the nervous system. We also disregard metaphorical uses of the word “free” that are not specific to humans (such as “this tree is free to grow in this direction”). Of course, the intention of an action can be, for example, to train, to obey a norm, or to rest in staying quiet and undisturbed, and acts include communication-acts, speech-acts, thought-acts, and so on. From this definition of liberty for acts, actions and individuals, one can define liberty for other social entities such as societies, countries or markets, by reference to individuals’ acts or by analogy.

With will-freedom, the free acts are the wilful or voluntary acts. With reason-freedom, liberty results from rationality (the use of reason) and free action is rational action (in this sense).

Reason-freedom implies the various classical aspects of “autonomy”, that is, one’s choice of one’s principles of choice, whether this is Rousseau’s definition that “to be free is to obey a rule chosen by oneself”, Kant’s interpretation that this rule is rational duty opposing one’s “inclinations”, the Stoic choice of one’s preferences, or the Buddhist control of one’s desires. In the extreme form, all spiritualities and philosophies of life enjoin one to accept the irremovable constraints and sometimes to “want” them (for Rousseau, “the free man wants what he can and does what he wants”, but accepting one’s chains does not require one to “cover them with flowers”).

The word “choice” implies a minimum of comparative rationality for selecting among the alternatives. The concept of “free choice” consists of a dichotomy of the causes of the (chosen) action between a certain internal process and the rest that constitutes the “constraints” and defines the “domain of choice”. The internal process may be epitomized by a structure of “preferences”. I have analyzed in other studies the relations between transitivity or acyclicity and rationality in the normal sense of the term, and the question of the wilful shaping of one’s own preferences <sup>6</sup>.

*Valuing liberty*

Freedom, therefore, is without ontological mystery (if not without questions): liberty is a structure of causality. But, then, why should one value a structure of causality ?

An answer that makes liberty rather close to an end value has the form of : by respect for the beings endowed with the entity whose

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6. See Kolm, 1982, 1986, 1987 c.

consequences on acts define their freedom, notably with reason ; that is to say, by respect for the *agents* who, by definition, choose and perform the actions. This means that the causal chains from the crucial entity (e.g., reason), should be interfered with as little as possible, or, in other words, that the agents should have as much means of action as possible. However, two aspects intervene here : the multiplicity of agents and of types of means. The multiplicity of agents and the various scarcities may render these agents rival among themselves. Whatever the solution chosen to share this scarcity, end-valuing freedom or agency implies that the practical social ethical end values have to be in the nature of individuals' means, and from a previous remark (rational) justice requires the individual means chosen as end values of justice to be ideally equal among relevantly equal individuals. However, one cannot have equality jointly for all types of means. For instance, there can be equally full rights to earn income for all, but this is inconsistent with equal incomes for all if individuals' capacities differ. This choice of equalizands provides the various possible criteria, principles and systems of justice. Certain types of means are chosen as end values, others are discarded, and adjustments among those that are retained have to be chosen when the corresponding ideal and prima facie equalities are not all co-possible. These adjustments can be of a number of types (priorities, compromises, and so on)<sup>7</sup>, with the corresponding "second-best egalitarianisms". These means can be, for example, freedoms to act, incomes, opportunities, primary resources, information

or education, and even capacities to appreciate consumption or life with an equalization in the form of compensation.

In one extreme and limiting case, all the means are considered together, including all human capacities (human resources) with possible transfers of products of productive capacities and compensations for different consumptive capacities or capacities to be satisfied. Satisfaction refers to individuals' ends. The corresponding ideal is an equal level of satisfaction. Yet, for application in any large society, this has practically to be replaced by the second-best egalitarian criterion of leximin or maximin in satisfaction, because equal satisfaction is either impossible or dominated by states with satisfactions that are higher for all but unequal (this priority to Pareto-efficiency is discussed below). These are the principles of *Justice* and *Practical Justice* in *Justice and Equity* (Kolm, 1971). The interpersonal comparison of satisfaction is based on the theory of "fundamental preferences" (id. and Kolm, 1966, 1994 b, 1996e), and it is made easier by the exclusive focus on the least satisfied or most miserable in the maximin<sup>8</sup>. Practically, this maximin is relevant when certain *basic needs* are not satisfied (and are not only vicarious needs), or in cases of deep suffering that can sufficiently be relieved.

In the other and opposite extreme case, the means consist of process-freedoms (see below) and the corresponding social ethic is full process liberalism if there is a priority of basic rights (id.), and full "neo-libertarianism" if there is no such a priori moral requirement<sup>9</sup>.

One can also start from a more modest and

7. A full analysis of these structures is provided in Kolm (1990).

8. Note that the concept of fundamental preferences is completely different from that of "extended sympathy" (Arrow and others) in spite of the formal similarity of the result. "Extended sympathy" has been basically rightfully objected to by D. Hausman, J. Broome, M. Kaneko, and others.

9. That is, the theory of M. Rothbart, D. Friedman, etc. The prefix "neo" aims to distinguish this school from the older classical "libertarians" or left-anarchists.

direct conception of justice, with the same result, and in the end with the same moral assumption. Justice, indeed, can be seen more directly as the adjustment among individuals' competing claims. Individuals' claims are for means to pursue their ends, with the ends themselves being the particular limiting case as just noted. Means can be called freedoms in a broad sense of the term (they can be rights, power, etc.). Then justice necessarily concerns the allocation of liberties, as a matter of fact rather than by ethical choice. However, the choice to solve the problem in taking certain of these items as moral end values is an ethical choice, which manifests or constitutes respect for agency, and leads to their ideal equalities as a requirement of rationality (as noted above).

At any rate, the rational theory of respectful justice consists of the selection of these specific *prima facie* equalizands, and of the adjustments and second-best egalitarianisms when an equality is not possible, or is not co-possible with other relevant criteria which can be other equalities. This choice results essentially from an analysis of the value of the various liberties (including here powers, rights, means, etc.). These values depend in turn on the characteristics of freedom and on the types of liberties that they define.

### **The essential characteristics, distinctions and types of liberties**

These characteristics are the following, which refer respectively to the questions of *cause, agent, nature, extent, constraint, value, action, use and conditions*:

1) The type of the *mental or physiological process or structure* that defines the freedom of the act in causing it: reason, the will, choice, desires, preferences, tastes, certain nervous processes, etc., and possibly more specific ones that consider particular influences.

2) The type of the considered free *person or agent*.

3) The nature of the considered acts or *domain* of choice or action.

4) The *extent* of this domain. Note that when a liberty of a new type is added to other ones without suppressing certain of their possibilities, this is both a complexification of the nature of the alternatives and a type of extension of domain.

5) The *nature and origin of the limits* or constraints that delineate this domain. In particular, these limits may be set by other agents' wills, or they may not be: this is *dependency* versus *independence*. The limits may also be set by institutions (themselves possibly set by wills, but endowed with a certain stability and predictability). The effects of an agent's past acts may constrain his present acts, and this may or may not have been purposeful. In "self-restraint", an agent voluntarily limits certain of his acts; this can manifest an external constraint, as when this restraint aims to meet an external threat, but this self-restraint may also constitute a higher liberty, when it is more caused by the intra-individual entity that defines freedom, such as the will or reason, in the corresponding self-control. The set of constraints, and a given constraint, can have causes of various types.

6) The *reasons* for valuing freedom, or on the contrary for preferring it to be more restricted. These reasons are analyzed in the next section. A rough dichotomy distinguishes between instrumental and existential liberty.

7) The situation of the considered liberty in the process of *action*. An action consists of *acts* using *means* for an *aim*. This provides three types of freedom, the distinction of which is essential both for the foundation and structure of basic rights and for the question of economic distributive justice (these concepts will be made precise and applied below).

8) The *use* to which this freedom is put. In



particular, the free agent can use this liberty in an individual choice, or he can use it in agreement with other agents, possibly in an exchange for something else.

9) The *defeasibility*, *alienability* and *prescriptibility* of a liberty, that is, can it be suppressed or transferred, or is it specified for a limited duration, or is this not the case, or under what conditions can this be the case? These properties can result from the nature of the freedom considered, or from social agreements or conventions, from an ethical choice, etc.

### The values of liberty

#### *The problems of valuing freedom*

Liberty is a means for doing things, and in its most common conception, which is most relevant here, for the achievement of the aim of the action that uses it.

Now "liberty or death" is a motto with which many people died and which changed the world. It expresses an unconditional preference for death over a life devoid of liberty of a certain kind. Yet a dead person does not enjoy this liberty either. And among the other things that a living person can enjoy, there certainly are some which make life preferable to death. Hence this motto is irrational... unless there is some other reason for valuing freedom, or certain freedoms.

Alexis de Tocqueville (1836) is peremptory: "he who wants freedom for anything but itself does not deserve it and will soon lose it". This beautiful and strong sentence rules out liberty-as-a-means from values and from possibilities: it has to be understood as a borderline case for the most basic of liberties.

Choosing between liberty and welfare is a standard topic of moral tales. In La Fontaine-

's fable *The Dog and the Wolf*, the hungry but free wolf pities the dog who is well fed, yet bears the mark of a collar. A country took as its motto and anthem "let us prefer liberty in poverty to plenty in slavery"<sup>10</sup>. A most vivid illustration is René Clair's film *A nous la liberté* where a wealthy manager prefers the liberty of poverty. Buddhist wisdom enjoins abandoning material wealth so as to free oneself from "attachments". The general upshot is that liberty is not always valued only as a means for what it enables one to obtain.

But is this rational, or even reasonable? Liberty is by nature a means, a possibility of action. Can one sensibly take a means as an end value? This is indeed possible for a means of individuals and an end value of a conception of justice, as a mere sharing of responsibility between the individuals and the policy that implements redistributions or respects or protects the "spontaneous" allocation. However, the above remarks suggest that liberty can also be valued in its own right by the concerned individuals, who attribute to it an intrinsic, final or end value<sup>11</sup>, sometimes with priority over other values, and this could be a reason for a theory of justice to value this freedom. But the value of a means is *a priori* only derived from what is done with it, and is thus subordinate to its use. Attributing an end value to a means is thus alienated hypostasis, fetishism. Even if individuals and cultures fall into such irrational illusions (as they commonly do with respect to selves or gods), should rational social ethics follow them on this ground?

Indeed, from its definition, liberty is *a structure of causality*. Now, causality is a matter of fact which *a priori* lacks the intrinsic desirability or the transcendence on which valu-

10. This country soon had both extreme poverty and a bloody tyranny (Sékou Touré's Guinea).

11. The analysis and the logic of this intrinsic value of liberty for individuals is worked out in the book *Happiness-Freedom* (Kolm, 1982).

es can be based.

Furthermore, whereas individuals often like and desire freedom, *they also commonly dislike and shun it*. They have a number of possible reasons for this. One is constituted by the various *costs of choosing*, such as obtaining information, considering all of the alternatives and reasons, weighing and comparing them, and deciding. A second reason is the deeper *"anguish of choice"*, analyzed, for instance, by Kierkegaard and particularly by Sartre, which can be a deeply disagreeable sentiment, sometimes a paralyzing one. A third reason relates to *responsibility*, which is sometimes valued and desired but is also sometimes disliked and shunned, and which can be an important cause of the anguish of choice. One can feel oppressed by a sentiment of having to choose or (and) of responsibility, as much as by a sentiment of helplessness and impotence elicited by the opposite absence of possible options. Moreover, an individual may prefer not to have to choose in order to avoid others' judgment concerning his choice (this may be related to responsibility). An individual may also prefer to leave a choice to someone else who, he assumes, has more information or wisdom. And so forth.

Then, the attribution of an intrinsic or end value to such an undesired liberty is directly against individuals' "welfare" in a broad sense of the term. These reasons for preferring to have less liberty, however, should hardly be a match when the reasons in favor of the considered freedom rest on the basic entities of existence, being, or indeed often dignity, to be presented shortly.

These various aspects and values of liberty should therefore first of all be disentangled.

#### *The various reasons for valuing freedom*

We now consider the various reasons why a liberty can be valuable for an individual (in his

own view, in the view of other persons, or in a conception of social ethics or justice). We first note, as we shall see again below, that the unavoidable word "means" can have various extensions and can thus be ambiguous. The following various reasons for valuing freedom begin by going, in a sense, from the most commonly manifest to the deepest.

- 1) Liberty is a means to obtain the desired consequences of the act it permits, in the most direct and restricted sense.
- 2) Liberty is a means for exercising one's capacities for movement, action, choice, reason, decision or willpower, as training for future action.
- 3) Liberty is a necessary condition for exercising one's capacities for action and choice for any motive, including for no further purpose. This has the value of actualizing the existence of these capacities. Liberty thus permits *activity*, which Aristotle, for instance, sees as the most necessary condition for *eudaemonia*, flourishing or deep happiness.
- 4) In its most common conception, which is most relevant here, liberty is *choice* and (*intentional*) *action*. Indeed, first liberty permits choice and choice requires liberty. But liberty also requires choice which constitutes its actualization, when choice is understood in a broad sense including choosing "inaction" and letting chance choose. Second, liberty is also *a priori* necessary for (*intentional*) *action* since a coincidence of intention with a strict external necessity would be fortuitous (or would be the particular spiritual attitude of wilful acceptance). And liberty also requires action sufficiently broadly understood (including resting quiet and delegating action). An "agent" is a purposeful actor. Hence, liberty is necessary for *choice* and *agency*, and therefore for the *existence of man as chooser and agent*.
- 5) Indeed liberty strictly defined by reason and intention which can be elaborate is cha-

racteristic of man. A deep philosophical tradition even makes it the essence of man (for example, “my freedom is not an added quality or a *property* of my nature: it exactly is the matter of my being”, “freedom is the being of man”<sup>12</sup> – this tradition includes Rousseau, Kant, Hegel, the philosophies of existence, and others). In the classical terms, liberty, the essenceless existence, is *the essence of man’s existence*<sup>13</sup>. Unfreedom thus is denial of humanity and reduction of the person to a thing, or *reification* (since the emphasis is on the acting and choosing being rather than on the sentient being). This constitutes the basis of the *existential and ontological values of liberty*. It is the first level of these values, the second being self-creation, which will be considered shortly. Then, since freedom requires choice (in the broad sense), it is responsible for this predicament of man, who is inherently “forced to be free” and to choose. Yet certain freedoms are more important than others in this respect (they are basic rights and the opportunities provided by the satisfaction of basic needs).

6) Liberty makes the chooser’s will and the agent’s capacities take place among the *causes* of the world. It thus makes man *a creator*. This in turn makes him *accountable* for a part of what exists – hence it makes him “count for something”. It also possibly makes him *responsible* for it.

7) In particular, liberty makes man *choose* and in part *cause his own acts and situation*. He can also in this way train, and modify or create his own capacities of all kinds. In particular, at the deep level of moral and mental freedom, he can choose or change his own end-values (choice of a morals and in particular Rousseau’s and Kant’s autonomy), desires (Budd-

hism) or tastes (Hellenistic philosophies). In all these respects and in all possible degrees, liberty is self-choice, self-determination, self-causation and self-creation. This is often seen as the deepest essence of man, his basic *ontology*.

8) Being a condition for existence, choice, action and responsibility, liberty is also a condition for *awareness, respect and esteem of oneself, for dignity and for pride*.

9) For the same reasons, liberty is a major condition for counting in others’ eyes, for eliciting their consideration in the form of expectations and interest, appreciation, respect or esteem, or on the contrary fear, hostility, contempt or hatred, in any case for having *social existence*.

10) The various types of liberty provide particular important reasons for valuing it. The first distinctions among liberties refer to the nature of that which is chosen and of the constraints. With respect to the nature of that which is chosen, the existential-ontological value is the reason for the unconditional priority of the respect of basic rights and the satisfaction of basic needs. As regards the constraints, a main distinction concerns whether they are chosen by some other persons’ will, or not. In the former case, unfreedom is *dependency*, and the corresponding liberty, non-dependency, is independence when it is sufficiently wide. Strong dependency is *domination* by the other. It is *subjection* when it uses threat or force (with the limit case of slavery when the whole domain is submitted to the will of one or several other individuals). Dependency can be mutual or unilateral, balanced or unbalanced. Excessive unilateral or unbalanced dependency may be particularly detrimental to dignity and personhood (alt-

12. Jean-Paul Sartre, *Being and Nothingness*, IV-1-1.

13. Note that liberty, the pure existence (and also a priori void) *has* no essence but *is* essence... of man’s existence.

though in other cases dependency provides the “honour of serving”) – in addition to the common unpredictability of the other individual’s acts, wishes or whims, and hence of the constraint. As Rousseau remarked, “it is not the nature of things that enrages us, but only bad will”. Particular values are thus attached to *non-dependency* and *independence*.

11) Liberty and its various effects elicit a spectrum of varied *sentiments* which entail various preferences. These sentiments can be of the free person or of other persons. Preferences concerning the aims that freedom allows one to obtain go without saying. However, one can also enjoy liberty *per se*, the activity it permits, the exercise of choice, or the consequences of liberty with respect to responsibility, importance, sense of existence, dignity, self-respect, others’ views of one’s choices and actions, independence, mastery of oneself, and so on. The lack of these benefits elicits opposite sentiments. Certain of these sentiments are very direct. Feeling free, being free, the pure sentiment of liberty, can produce serenity, joy, exhilaration or elation. Unfreedom can produce, on the contrary, painful sentiments of helplessness or unimportance. Furthermore, the same aspect or consequence of liberty can produce both positive and negative sentiments, alternatively and even jointly: choice can provide excitement and a sense of importance, or embarrassment, complication and anguish; responsibility can be a burden or a dignity.

### *Priorities and happiness*

These reasons for valuing liberty constitute a rather complex set. Two major groups of reasons stand out, however. They are, respectively, freedom as a means to obtain the result of the chosen acts, and freedom as a condition for human existence and being, that is, the *instrumental* and the *ontological-existential* values of liberty, or *freedom for having* and

### *freedom for being.*

By its existential-ontological value, liberty is a condition for human existence, and, for this reason, it has often been seen as having *priority* over other values, including other reasons for freedom, and “welfare”. This is what is expressed by the positions noted above, such as Tocqueville’s indictment and the other examples. The cry “liberty or death”, for instance, manifests this transcendence: it could not be uttered for a liberty that would only be a means for some extra enjoyment of life. Freedom as a condition for human existence has “a value but no price” or, in Kant’s terms, “dignity” and no price. This applies particularly to the specific “basic liberties”, that is, the essential Rights of Man and of the Citizen, whose priority is implied by their being declared “inalienable”.

Finally, respectful justice can a priori be based on two types of individuals’ values: those in the category of liberty and those of the family of happiness. These two groups have a number of relations between themselves. First of all, the comparison of happiness appears formally as the limiting and borderline case of the comparison of liberties – where comparison means that an individual has as much or more than another – when all means are jointly included in the comparison, including the capacities for being satisfied. More straightforwardly, all the above mentioned reasons to value liberty can elicit the satisfaction or the happiness of the freer individual. We have, truly, also noted various reasons why an individual could be unhappy with liberty or with more liberty and would prefer to be less free. However, the anguish of choice and the fear of responsibility tend to vanish when more freedom in the category of mental liberty is obtained<sup>14</sup>. Therefore, freer practically implies happier if the scope of the increased freedom is sufficient broad. Conversely, the individual would normally like

his dissatisfaction, pain or unhappiness to be repelled or removed; the existence of these sentiments thus constitutes for him a binding constraint; hence, the alleviation of these feelings constitutes a liberation. Moreover certain mental states such as satisfaction, happiness, and in particular the resulting serenity, are common necessary conditions for conscious free actions, in freeing the individual from more or less obsessional desires, dissatisfactions, tensions or pains<sup>15</sup>, just as, on the contrary, a certain dissatisfaction or unhappiness may act as the spur for rational and wilful action. To conclude, one cannot a priori and in general oppose an ethic of happiness and an ethic of liberty, eudemonism (or, perhaps, “welfarism”<sup>16</sup>) and eleutherism. Both values are inextricably tied by many links. The distinction can only refer to particular liberties, means or problems.

### Liberties and justice

#### *The three types of liberty with regard to action*

Liberty, indeed, can be of many types, of many things, and can have many actual, specific manifestations. However, *the modern theory of justice is first of all structured by the following action-centered classification of liberties in the broad sense.*

An *action* can be seen as a set of *acts* using *means* for an *aim*. The acts, the aim and the relation from the former to the latter constitute the *process*.

The *means* considered here can be: *capacities* which are by definition part of the agent; *tools*; *social power*, that is, a possibility to influence other agents' acts by force or inducement (i.e., against their will or thanks to it); in particular *income* or *wealth* which are purchasing power – that is, power to induce without persuading –, which can obtain voluntary services or transfers from other agents through exchange; other property. An action always uses some means since the agent's will can influence the world only through certain capacities of the agent (to begin with, his willpower, and others). The aim can in particular be a product or output<sup>17</sup>.

The constraints on an action can therefore bear either on the *availability of the means*; or on the *acts* given the means; or on the *aim* given the acts and means, that is, either on the aim or product itself, or on its relation to the acts or to the means that cause it. Looser or fewer constraints of these types are respectively more *means-freedom* or just *means*, *act-freedom* and *aim-freedom*. Note that the understanding of “means” is restricted here so as not to include act-freedoms (and aim-freedoms). The corresponding act-freedom and aim-freedom together constitute *process-freedom*.

A social ethic that advocates a liberty is by definition a “liberalism”. Hence, there are act liberalism, aim liberalism, process liberalism which is both of the former, and means liberalism<sup>18</sup>.

14. See the analysis in *Happiness-Freedom* (Kolm 1982).

15. The relations between freedom and happiness, and their causes, structures and consequences, constitute a notable part of the book *Happiness-Freedom* (Kolm 1982).

16. The term coined by Hicks (1959).

17. The aim can be intermediate or final for the agent. It can also be more or less inherent in the act, as with the sensation provided by an activity, or with following a norm or obeying a duty (the aim can also be seen sequentially as having followed the norm or obeyed the duty).

18. “Liberalism” is thus used here in its etymological sense of based on liberty. Note that the current use of this term in English is at odds with its use in the previous century in English and with its present and past use in all other European languages.

These concepts underlie and structure the theory of justice as follows: full act-freedom, justified by the existential value of liberty, leads to the human and civil rights (basic rights or liberties) and their priority; then distributive justice is determined by choices and balances between process-freedom and equal means-freedom. This process-freedom, however, is limited by others' basic liberties for a moral reason (forbidding direct violence).

### *Basic rights and basic needs*

The existential value of liberty demands act-freedom which materializes into the classical basic Rights of Man and of the Citizen (those stated in the first sixteen articles of the 1789 Declaration, thus excluding the seventeenth and last article on "properties"). Any rivalry between acts, whatever their nature and actors, can be attributed to the means they use. Hence naked basic rights defined by the corresponding act-freedom are essentially non-rival (a qualifying discussion would be in order for certain cases of free expression)<sup>19</sup>. These basic rights can thus be held at satiety. The statement that they should be equal for all and maximal (expressed by Rousseau, the 1789 Declaration, J.S. Mills, Rawls, and others) is therefore a bizarre expression which amounts to this full respect. Remark that if these rights were defined as including some means so as to make them "real" rather than merely "formal", this classical formulation cannot hold per se, since there is no a priori limit to the amount of goods that can improve the use of these rights, and it would raise a number of questions and would have to be modified<sup>20</sup>. The existential value thus demands that these rights be fully respected with priority.

In addition to this "formal" requirement, the existential value demands the "real" liberty of a minimal means-freedom in the satisfaction of basic needs. These needs are largely defined by culture (a "decent meal" costs many times the lowest possible cost for its nutritional content), and they include means for various social relations. These basic needs also depend on the means of society, and there often is more or less a rough consensus concerning what they are in any given balanced society<sup>21</sup>.

### *Equal liberties and distributive justice*

We have seen that respectful justice consists of the selection of types of individuals' means whose allocation is ideally equalized among relevantly equal individuals, if necessary by sharing of resources or of output, or by compensatory transfers or assistance. "Ideally" or "prima facie" means in the absence of an overpowering reason, and when such reasons exist, for instance when several such ideals are not co-possible, ways of adjustment and the corresponding second-best egalitarianisms have to be provided<sup>22</sup>. The equalizing policy concerning a means (in the restricted sense) violates a corresponding process-freedom, for instance by a redistributive taxation. In the domains that are not directly affected by this policy, process-freedom prevails. Process-freedom corresponds to what Hayek calls a "spontaneous order", or to what the classical contractarian vocabulary would label the "natural" allocation of a human resource (that is, each individual is entitled to the usufruct of his own capacity). The two extreme and limiting cases have been pointed out. On the one hand, full process-freedom precludes all su-

19. See Kolm (1996 e, chapter 4.)

20. See the discussion in Kolm (1985, part V.)

21. See Kolm (1977 b.)

22. The various types of these adjustments are analyzed in Kolm (1990).

**Table 1**  
**The three polar cases of distributive justice**

| Capacities<br>- Consumptive<br>- Productive | Allocation   |  |  |
|---|--|--|--|
|   | Natural<br>Natural   | Natural<br>Equalize  | Equalize<br>Equalize   |
| End value equalizand                        | <i>Process-freedom</i>   | <i>Income, consumption</i>   | <i>Satisfaction</i>  |
| Principle                                   | Full Process-Liberalism  | Equal consumption or income  | Needs or ends full Justice   |
| Cause of inefficiency                       | Market failures  | 1. Multidimensional equality<br>2. Disincentive  | Equality   |
| Solution for efficiency                     | <i>Liberal Social Contract</i> , liberal Public Economics (Kolm, 1985)   | 1. <i>Efficient super-equity</i> (multidimensional maximin; Kolm 1973, 91, 93)<br>2. <i>Fixed-duration income equalization</i> (Kolm 1966, 91, 93)                       | <i>Basic needs in Practical Justice</i> (leximin in fundamental satisfaction, Kolm 1971) |
| Incomplete or irrational theories           | Private full process-liberalism:<br>- Locke<br>- The 1789 Declaration<br>- Classical "political economy"<br>- Nozick | Equalizand as:<br>(1) Consumption goods (Tobin 1970)<br>(2) Spheres of justice (Weber and Walzer 1983)<br>(3) Primary goods (Rawls 1971)<br>(4) Resources (Dworkin 1981) | Utilitarianism, "social welfare"   |
| Omissions                                   | Market failures  | - The inefficiency of multidimensional equality: (1), (2)<br>- Exchange capacities: (2), (3), (4)<br>- The ethical value of prices: (2), (3)                             | The rationality of equality  |

pra-individual intervention in the distribution motivated by justice. On the other hand, end-Justice considers jointly the benefits from all resources, including satisfaction capacities, as the ideal equalizand (using transfers and compensations). A third conspicuous polar case endorses the natural allocation of consumptive and satisfaction capacities, and it throws all the other resources in the equalizand pool (including individuals' productive capacities or the benefits from them). The table shows these three polar cases, the solution

to their difficulties with Pareto-efficiency, their classical but incomplete or erroneous formulations, and the omissions that cause these imperfections.

For explaining this table, two preliminary remarks are in order.

First the human resources raise almost all of the global distributional problem in modern societies. Indeed, labor income constitutes a very large part of social income, even almost all of it if one allocates capital income to the primary resources (labor and

non-human natural resources), these non-human natural resources are initially allocated by processes using other resources (collective agreement, first occupancy, and reference to needs, productive capacities, and mere existence in equal sharing), and, last but not least, consumptive and satisfaction capacities are also human resources. Then, since process-freedom amounts to self-usufruct and is the opposite of the equalization of the benefits from the corresponding capacities, it appears clearly that the question of distributive justice consists essentially of the allocation of the various types of capacities to these two types of liberty.

Second, respectful individualistic justice should certainly give priority to Pareto-efficiency because it represents collective freedom from the various possible causes of its failure and collective rationality (unanimity is a case of equal power), possibly with individual preferences cleaned ("laundered", "ironed") for certain of their immoral elements such as malevolence or strong envy<sup>23</sup>.

The three polar cases endorse respectively the "natural" allocation of all capacities, of all consumptive capacities and only these, or of no capacity. All three entail Pareto-inefficiency, and the corresponding efficient second-best solutions have been proposed.

Full process liberalism constitutes the classical essential justification of free markets and capitalism. This is the ideal of Locke, of the 1789 Declaration including its last article, of what was called "political economy" in the nineteenth century, including by Marx, although the same principle is also what he calls, after Blanqui, socialism (since this is the straightforward interpretation of "to each according to his work" – the basic difference,

for Marx, is that the labor supply of propertyless proletarians is not really free); in recent times, this view is proposed by Nozick (1974), and its rational axiomatic construction is presented in Kolm (1985). Except for this last reference, these authors limit themselves to "private" full process-freedom, which is marred by market and agreement "failures" (such as non-excludable public goods, externalities or transaction costs) that entail Pareto-inefficiency in comparison with other possible organizations. This produces the duty to implement what these process-free exchanges or agreements would have produced in the absence of the causes of these "failures", and this implementation is essentially performed by a "liberal" public sector. Hence these public interventions implement the corresponding process-freedom rather than interfering with it. Each such case constitutes a "liberal social contract" and their set is the Liberal Social Contract (see Kolm 1985, 1987 a and b, 1991d). Thus completed, the theory constitutes complete full process liberalism.

The intermediate case where the natural allocation of consumptive capacities (preferences, tastes, and so on) and only of these is endorsed is the locus of a number of theories which advocate the ideal equalization of consumption goods (Tobin 1970), of "primary goods" (Rawls 1971), of resources (Dworkin 1981), or within "spheres of justice" (Max Weber, and Walzer 1983). These theories face a number of problems. Pareto-efficiency is generally violated by the multidimensional equalities in consumption goods or within "spheres of justice". Dworkin's allocation of resources which are exchanged and transformed, and to a lesser degree Rawls and Walzer's allocation of incomes (they constitute

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23. A general view on laundering preferences is provided by Goodin (1986). The specific, technical application to the case of envy is presented in Kolm 1991 a, 1995 a.



one “primary good” and one “sphere of justice”) which are spent, endorse the “natural” allocation of capacities to exchange, bargain or deal on markets; these capacities can make an important difference in the final outcome; but they are not consumptive capacities, and hence their natural allocation constitutes an inconsistency for these theories. Finally, the theories that consider incomes should justify the ethical legitimacy of the corresponding prices.

The solution to these problems begins with the remark that taking preferences off the classical economic process (from productive resources to income, then to consumption goods and finally to satisfaction) leaves the consumption goods as ethical end-values. Hence the ideal equality is that of the individual bundles of these goods. But this is generally not Pareto-efficient. One then resorts to the corresponding egalitarian second-best of a multidimensional maximin (see Kolm 1977, 1987 d, 1991 c, 1996b) that leads to “super-equity” (id. and Kolm, 1973 a). *Efficient super-equity* then turns out to impose limits on the discrepancies in incomes (reckoned with efficiency prices), but these limits are much less stringent than strict income equality. This permits one to satisfy the principle of justice in avoiding the classical disincentive and inefficiency-generating effect of the redistribution of earned income.

Moreover, ethical views commonly stand somewhere in between this case and full process liberalism, that is, they hold that only part of the proceeds of productive capacities should be redistributed. The corresponding fiscal structure that avoids the disincentive and inefficiency-generating effect of taxing (and subsidizing) earned income because of the adjustment in labor duration is *fixed-duration income equalization*. This consists of the full equalization of incomes earned during a given duration, whereas the other inco-

me that the individuals choose to earn (in a free labor market) is untaxed. For example, the actual income redistribution in present-day western developed countries corresponds approximately to a full equalizing redistribution of the incomes earned during the first 10 to 18 working hours of the week (but of course, the actual fiscal structure is different and wasteful). This redistributive fiscal structure implies a guaranteed minimum income equal to the average wage during this duration, which can cater for basic needs. This fiscal structure has better be actually adopted for reason of efficiency, but, at any rate, its notional consideration constitutes the relevant parameter to discuss the central ethical redistributive choice in a society. The place of process-freedom and self-usufruct, measured by the time out of this duration, is here for a moral reason, rather than for the instrumental reason of the efficiency of free exchange, as it is the case, for instance, for a utilitarian objective for Pareto (and the ensuing economic tradition) or for the “difference principle” for Rawls. This duration defines the limit between process-freedom on the one hand, and means-freedom equalized by redistribution on the other. It describes the degree of solidarity and its actual choice will be influenced by the sense of community in the considered society. For modern nation-states in charge of most of the fiscal redistribution, the realistic levels are between one fourth and one half of the working time. Further discussion of the optimal and possible level of this parameter will be presented in other studies.

### **Social contracts, fundamental insurance, merit, responsibility**

Free choice is also the key valuing concept of other principles of justice, which play a role in the refinements of the preceding general classification (and which have sometimes been considered as the general solution of the

problem of justice).

If freedom is ethically valued as producing good or legitimate outcomes rather than for the free choice itself, but the free choice fails to materialize because of some impediment, there is a case for implementing by other means what the free act would have produced in the absence of the impediment. This implementation may well constrain the actual act of the “free” individual, for instance if the impediment is ignorance, or the lack of possibilities to communicate or to commit oneself that induces inefficient strategic situations (for instance of the prisoner’s dilemma type). Then, as Rousseau says specifically for the latter kind of situation “they must be forced to be free”. This justifies both standard public regulation for the protection of the imperfectly informed consumer and the most famous type of political theories, social contracts.

A social contract is a putative, hypothetical agreement that justifies a certain public organization or action. It justifies political constraint by individuals’ “free” choice. Proposed by the Stoics and rediscovered at the Renaissance, it was, during the 17th and 18th centuries, the political theory of all scholars who did not merely rely on tradition and God’s will (apart from Montesquieu)<sup>24</sup>. Recent works have used the concept differently<sup>25</sup>. In “liberal social contracts”<sup>26</sup> the impediments to free exchanges or agreements are “market failures” or more general “agreement failures”, and this provides the consistent completion of full process liberalism to these cases. One particular and extreme type of liberal social

contract occurs when the impediment to an exchange is that individuals cannot have taken insurance against the risk to be poorly endowed with some personal characteristic, because they received this endowment at birth or in childhood. This can cover physical or mental characteristics, such as poor health and productive capacities in low demand, education or motivation received in the family, and so on. The correction of this kind of “market failure” consists of transfers of the would-be insurance compensation from the would-be payers of the insurance premia, and these payers are the individuals well endowed with the considered characteristic if the insurance is a mutual insurance against this “risk”. This is a *fundamental insurance*, studied in *The Liberal Social Contract* (Kolm 1985) as one possible consequence of valuing process-freedom. A similar scheme was proposed by Dworkin (1981), but this is hardly consistent with his basic principle which is *resourcism*, that is, an ideal *equality of resources*, possibly including the considered human resource, since fundamental insurance is on the contrary a “liberism”<sup>27</sup> or process liberalism based on the moral assumption of the value of process-freedom, which leads to different levels of compensation for different individuals, and does not provide the abstraction from preferences that Dworkin seeks to obtain.

What may be wrong (or right) with process-freedom is the implicit endorsement of the “spontaneous” allocation of the individuals’ means, and in particular of the natural allocation of the human resources. In the case of a fundamental insurance, this is the endor-

24. A general theory of social contracts can be found in Kolm (1985, chapter 23).

25. Original position theories are considered below. Buchanan’s social contract (1975) consists of the truce manifested by the respect of the actual rules of society (these rules constitute the “constitution” which can be written, explicit, or tacit or revealed by social behavior).

26. Kolm 1985 (see also 1987 a and b).

27. A useful neologism introduced by Italian scholars for process liberalism.

sement of the natural allocation of capacities or handicaps that are not at stake in the insurance. This objection disappears in an extended fundamental insurance where the individuals putatively insure for everything that differentiates among them. This is the theory of the original position, baptised and analyzed by Rawls (1971), used by Harsanyi (1953), and suggested by Vickrey (1945). Identical individuals "in the original position" choose the rules or the allocation before they know what actual individuals they will be and in considering only their self-interest (for Rawls). Hence they will choose a bad outcome for certain actual individuals if this permits them to make sufficiently many actual individuals sufficiently well off or well endowed. This would be unjust for the sacrificed actual individuals. And these actual individuals can hardly be held responsible for this choice of the original individuals (who all make the same choice since they are identical and face the same possibilities). Indeed these original individuals first, are a myth, and second, have no selves that differentiate them from their competitors in the allocation of resources and would transmit to specific actual individuals (if these original individuals have a self at all). Hence a theory of the original position cannot be a theory of justice. This is confirmed by the fact that the mental process of choosing justly among opposed interests, and its conclusions, are very different from an individual's self-interested choice in uncertainty (they are led by the rationality of equality recalled above). Therefore disagreements about what specific criterion this theory leads

to have no importance<sup>28</sup>.

In other liberty-based major concepts of distributive justice, the constraint constituted by the link between the action and its consequence for the actor is the instrument of justice. Then distributive justice is reduced not only to commutative justice (as with process-freedom or, implicitly, social contracts) but more specifically to retributive justice. The notions are those of merit or deservingness, and responsibility. Responsibility for one's own situation has been the key concept of the opponents to social insurance, and it is now emphasized in order to justify a certain restraint from egalitarian end-justice by scholars such as Cohen, Arneson, Roemer, Fleurbaey, and Maniquet. Responsibility is ascription according to cause by the will and hence by freedom, a causation which can be by omission or by commission. But all the considered items have joint causes, and hence causation by a will generally does not suffice per se to determine the assignment. Thus responsibility entails a large part of ethical choice only submitted to a necessary condition of causation. Hence reference to responsibility denotes a type of ethical solutions rather than a specific solution determined a priori. Historically, the notion of self-responsibility has played for the liberal right a role symmetrical to that played by needs for the left. But responsibility is a wider concept that extends beyond oneself, especially since responsibility can be by omission as well as by commission. Responsibility is indeed the basis of the notions of duty and of agents' liability toward the world. For this reason, it constitutes the cen-

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28. Rawls argues that there exists a possible ignorance in the original position (a "veil of ignorance") such that the individual the most badly treated will be treated as well as possible (the "difference principle"). But why assume this ignorance? Since the issue is to allocate according to the characteristics of the individuals, it seems that the only ignorance justifiable by the theory concerns the allocation of these characteristics to the individuals, but that this ignorance should be complete. This is the "thin veil of ignorance", considered by Harsanyi, which leads to a utilitarian form (and is one case which implies the mentioned injustice).

ter of major philosophies of solidarity and engagement (Sartre, Jonas, and formerly Bouglé and Braunschwig). In particular, more important than the fact that I am or not responsible for my ends and tastes is the idea that I may be responsible for the satisfaction of my fellowmen's basic needs.

### Conclusion

Equality of liberty broadly understood thus constitutes the basic principle of justice, with various forms and necessary adjustments, and including the limiting cases of welfare and happiness. This holds for macrojustice, including global distributive justice, which combines a handful of criteria, for the open-ended list of multifarious issues of microjustice and its much larger list of criteria, and for mesojustice which deals with issues that are specific but very important and widespread (notably general policies concerning human capital, such as education). Therefore, the determination of the social optimum and of justice in society rests essentially on two bases, one moral and one logical. The moral basis consists of the values of liberty, based on the characteristics of liberty, that have been presented. The logical basis consists of a number of formal properties, concepts and results which characterize equal freedoms in various circumstances, permit adjustment among various criteria, and in particular provide the corresponding second-best freedom egalitarianism. These properties include those that have provided the solution for macrojustice. But the most basic are the equivalence between equal independent liberty and Equity in the sense that no individual prefers another's allocation to his own<sup>29</sup>, the extension of this property to the definition of "no less free" and

"freer" and to the case of interdependent liberties, and the resulting definition of the efficient maximins or leximins in freedom for the cases where equal liberty and Pareto-efficiency are incompatible<sup>30</sup>.

The distinction of liberties that is relevant for justice, which has been used here, has more or less precise precedents. In particular, Marx's "formal liberties" cover act-freedom and basic rights, and more generally process-freedom, whereas his "real liberties" are means-freedom. Yet this distinction has been used to justify the suppression of basic rights. By contrast, this opposition differs completely from the famous distinction between negative freedom and positive freedom emphasized by Isaiah Berlin (after Benjamin Constant and many others), notwithstanding certain economists' misunderstanding of positive freedom. Berlin describes negative freedom as act-freedom, extended to process-freedom (he refers to "economic liberties"), where the constraint is another person's will (his weak point, here, is an absence of discussion of agreements or exchanges and of strategic interactions)<sup>31</sup>. But Berlin's "positive freedom" has nothing to do with means-freedom. Positive freedom is described by Berlin as "being one's own master", valued for the existential reason, interpreted as the spiritual or mental freedom of choosing one's aims as with the Rousseau-Kant "autonomy" and indeed often in the name of reason, then as choosing as one's "true" self the reference to a group (state, nation, race, church, class), and finally as imposing people's behavior in the name of the "higher" or "truer" freedom so defined. Examples of this tyranny in the name of liberty include references to "people's will", including in Rousseauian social contracts. They

29. See Kolm 1971, 1973 a, 1993 b, 1994 c, 1995a, 1996b, 1996c, 1996e.

30. See Kolm 1993 d.

31. The distinction between "freedom from" and "freedom to" is also rich in possible confusions.

would certainly also include the “sense of history” and Hegel for whom the freest man is the Prussian soldier marching in step as he embodies the State. Berlin’s implicit aiming at various modern ideologies is obvious. Indeed, Martin Heidegger, in his famous (or infamous) “rectorate discourse”, derives, from the Rousseau-Kant-like principle that “to give law to oneself is the highest freedom”, that “the highly touted ‘academic freedom’ is being banished from the German university: being merely negative, this freedom was spurious ; it meant indifference, arbitrariness of goals and inclinations, actions without restraint”. But, of course, the rule was not to be provided by pure reason but by *volk’s* destiny. What Berlin implicitly attacks by his criticism of positive freedom is certainly not the democratic welfare state.

Finally, the question of liberty is almost co-extensive to the question of man and of society. Hence attempts to understand or to judge man or society should necessarily consider liberty, but liberty has no reason to be less twisted a fact than the wood of which man is made of according to Kant. Partial studies of specific cases and aspects of liberty necessarily have a role in this understanding, but only by starting from the overall view can they situate and appraise their contribution and ascertain that they analyze relevant and important questions.

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