Global Justice in a Democratic World

This book connects with the current debate on one of the most crucial philosophical ideas—the idea of social justice presented in the wider context of contemporary liberalism. Offering a reflection on the universality of the idea of social justice, the book argues that it is both required and feasible in modern democratic societies. The author provides a comparative analysis of the recent liberal theories of justice and argues that the novelty of the Sen’s and Nussbaum’s approaches, in comparison with Rawls’ theory, is that they apply the notion of human capabilities which enable them to discuss the problem of social justice on a global scale, addressing issues which are neglected or insufficiently developed, such as global inequalities and other forms of exclusion. All these liberal theories significantly enrich the set of fundamental principles of political morality that concerns the sphere of political action. The author concludes that the introduction of the idea of social justice into the contemporary liberal doctrine and political practice is essential for the preservation of the world’s liberal democracies.

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Global Justice in a Democratic World

Contemporary Liberal Theories

Justyna Miklaszewska
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The political philosophy of liberalism originated in the Enlightenment, with its basis being shaped by the most eminent philosophers and economists of the era, but its implementation came about in the nineteenth century, mainly in the economies of the most developed Western countries—France and Britain. Then, liberalism took the form of an ideology that emphasized the inseparable nature of the relationship between political and economic liberty, with its ideal form being that of the free-market economy. Even though philosophical concepts also emerged that defined methods for securing individual freedom in only the political sphere without focusing on economic matters, both of these varieties of liberal political philosophy firmly separated ethical values from politics and economics. The negative impact that the free market and capitalist economy had on human life led to fierce criticism from the socialists, social democrats, and Christian thinkers of the century. These accusations not only concerned the application of classical liberal ideas in the economy of many European countries and the problem of labor exploitation but were also of a more general nature. They largely centered on the fact that liberalism was a political theory based on the concept of *homo economicus* and thus overlooked crucial ethical values and feelings such as solidarity, compassion and dedication to others, and patriotism.

After the relative domination of socialist and social democratic ideas in intellectual discourse and political practice of several countries in the first half of the twentieth century, these ideas were implemented on a larger scale in the countries of the Communist Bloc in the second half of the century. The West also saw liberalism in a modified form, as a modern theory of a free-market economy in a democratic state, one that once again began to influence political life. It still exists in this form in most countries of the world and, after the collapse of communist systems, in Central and Eastern Europe.
as well. This process helped to strengthen the integration of these countries into the structures of the European Union and, although some fundamental principles of constitutional liberal democracy are currently violated in some countries of the region, this model remains the only alternative to political dictatorship and inefficient economies based on interventionism.

As a result of globalization processes, new facts emerge that must be tackled by the liberal doctrine. Of these processes, the problem of social and economic inequality comes to the fore. This phenomenon has been present in various cultures and political systems since the earliest times; however, as sociologists, philosophers, and economists emphasize, its scale is now much larger than in the past, even a few decades ago. As a result of economic processes, the gap between the small group of people in possession of the majority of the world’s wealth and the middle-income and poor, whose living standards remain largely unchanged, is widening. Thus, if liberalism is to continue to shape social institutions, it can no longer appeal to charity and philanthropy, as the classical liberals did, but should propose tools for a democratic government that will improve the living standards of less wealthy citizens. The problem of the fair distribution of goods, considered to be a key component of the issue of social justice, is a challenge today for liberalism, and its solution is one of fundamental importance for the development of societies.

A feature of the liberalism of the second half of the twentieth century was its focus on ethical issues, particularly on social justice. John Rawls’ *A Theory of Justice* constituted a breakthrough in this respect, launching a worldwide discussion that has resulted in numerous publications on this subject. The inspiration that Rawls’ classic work provided, together with his hard-to-overestimate influence on the shape of modern liberalism, has meant that any philosopher tackling political philosophy at the end of the twentieth century could not ignore his work, as Robert Nozick has noticed.

Moreover, Rawls’ theory of social justice still exerts a strong influence on recent works on this topic and this interaction takes different forms in the main currents of contemporary liberal philosophy. Thus, in the public choice and social choice school, the problems of the ethical justification of democracy and the market economy are analyzed in a framework of collective choice rules, albeit in a similar manner to Rawls. Libertarianism contains a harsh critique of the presuppositions of the Rawlsian theory, juxtaposing them with free-market principles of justice, whereas communitarian theories, which also reject these presuppositions, propose the replacement of the liberal theory of justice with the republican tradition. In legal philosophy, there are theories developing the issues only flagged in the theory of Rawls. Similarly, in political philosophy there are theories of global justice in which Rawlsian *justice as fairness*, which primarily had to be applied in a single
country, has been extending to all people in the world. Rawls himself rejected these theories as leading to unpredictable consequences, although he did not in fact offer a convincing solution to the problems of economic and social inequality on an international scale.4

This book provides a comparative analysis of the theories of justice of Amartya Sen and Martha Nussbaum. These theories can be described as answers to the crucial objection toward the Rawls’ work that this theory of justice does not offer tools to solve vital global problems, that is, rising inequalities. They both modify Rawls’ theory to a large extent without destroying the fundamental values to be found in his approach. The novelty of Sen’s and Nussbaum’s capability approach in comparison with Rawls’ is that they discuss the problem of social justice on a global scale in a unique way. They do not try to extend and adjust the principles of justice to the whole of mankind, nor do they treat the difference principle as needing to be applied everywhere. Instead, they present their own cosmopolitan ways to apply their theories of justice to solve the issues of economic and social exclusion, including the issue of inequality on a global scale.5

What primarily connects their theories with Rawls’ attitude is an understanding of political philosophy as a domain of research that not only creates theoretical models but also affects collective life. Indeed, these theories of justice create a forum where political philosophers pursue a common goal aimed at implementing social justice into the functioning of democratic societies. We are trespassing here into the field of practical philosophy; thus, this book is not only an attempt to present these theories but also an attempt to determine their susceptibility to practical implementation.

In his work The Idea of Justice (2009),6 Amartya Sen proposes an empirical, comparative procedure for defining justice, one closely related to capabilities. Although he makes an effort to create a counterpoint to the Rawlsian theory of justice, they both ultimately pursue a similar goal of developing a model of a just, liberal-democratic society in which individuals have a significant impact on the shape of institutions and laws of the state. Furthermore, Sen introduces the issues of individual values to considerations of justice by combining elements of the Rawlsian theory with the approach that is characteristic of the schools of social and public choice. It constitutes an attempt to create a theory that is not limited to academic discourse but rather refers to practice, even though it does not take into account all of the problems that are important for individuals nowadays.

Making reference to the theory of Rawls and the capability approach of Sen, Nussbaum in her Frontiers of Justice extends the considerations on justice further than they do in order to encompass problems of social life such as the discrimination of women in some countries, the situation of people with disabilities, and animal rights.7
Rawls’, Sen’s, and Nussbaum’s theories of justice comprise the main topic of this book, the purpose of which is not the reconstruction of each of them, nor refutation of the accusations against them. The goal of this book is a comparative analysis of these concepts and a demonstration of the relationship between them, which first of all addresses the fact that they share an attitude of political pragmatism. Without the inspiration provided by A Theory of Justice, Sen’s and Nussbaum’s works on social justice would probably not have arisen. In addition, their theories facilitate the extension and enrichment of the political philosophy of liberalism by including values that have been overlooked or underdeveloped within it, such as the problem of the quality of human life or the issue of political emotions. All three of these liberal theories significantly enrich the set of fundamental principles of political morality that concerns the sphere of political action.8

Attention should also be paid to the methodological aspects of these theories of justice because each of them is based on different foundations. The Rawlsian theory is an example of the application of analytical and rationalist methods, whereas Sen builds his theory on empirical foundations, and Nussbaum combines elements of intuitionism and emotivism in her research approach. Although the last two are to some extent in opposition to the Rawlsian theory and focus more attention on political and economic practice, they do not seem to be easier to implement than their predecessor. Focusing on the issues of human action, they do not devote much space to the problem of institutions. Thus, only by utilizing tools developed within the theories of public and social choice can the barriers to the application of theoretical programs to reform existing institutions be addressed. In particular, it is the combination of Sen’s theory with the methodology of public choice that makes it possible to develop a model that can allow for the assessment of the policy of current democratic states and for solving some of the crucial social and political problems of the contemporary world.

It is also worth noting that both the capability approach of Sen and Nussbaum as well as Rawls’ theory are normative and based on liberal axiology, and therefore on a system of values in which individual freedom plays a key role. As a result, they do not derive values from the cultural and social arena but rather from the actions of individuals and the political sphere they cocreate. This individualistic approach, however, does not presuppose absolute freedom of an individual in the economic sphere; this freedom is treated as one of the areas of social life and is subject to certain regulations.

There is, however, an important difference between the Rawlsian concept, on the one hand, and those of Sen and Nussbaum, on the other. This difference consists of the fact that the social justice that defines the distribution of goods in the Rawlsian concept takes the form of two principles that are agreed and adopted in a hypothetical original position. In the concept of Sen
and Nussbaum, however, it is agreed by means of social debate and in the context of the given conditions. This leads to relativism because there is no other criterion than a decision by a democratic majority that would make it possible to decide on the validity and legitimacy of political and legal solutions. This relativism may, however, be weakened in the framework of public choice theory.

The theory of public choice, which takes the mechanisms of democracy and particularly voting procedures and methods of democratic decision-making as the main subject of its research, favors unanimity rule, which guarantees impartiality. Both the theories of Rawls’ and that of public choice include collective choice analysis and, as a consequence, struggle with the problem of translating individual preferences into legitimate and fair collective decisions.

The first part of the book concerns the inspiration that Rawls provided for contemporary political philosophy, and how his theory has been adapted by the representatives of the capability approach: Sen and Nussbaum. In the second part, Sen’s and Nussbaum’s theories of justice are considered in detail, and these analyses focus not only on the theories themselves but also on their application to solve the crucial problems of the modern world. In Sen’s philosophy, the emphasis is placed on the issue of the freedom of the individual in connection with economic prosperity and the functioning of the democratic state, while Nussbaum focuses on the dignity of the individual and the groups of people affected by various forms of exclusion, which in her view also applies to animals. The third part concerns the central issue of liberal philosophy: that of individual freedom, presented on the one hand from the point of view of libertarianism and on the other from the perspective of the theory of public choice, which stresses the importance of ethical self-constraints. Freedom is presented not only as a complement to the theories of justice mentioned above but, especially in Sen’s theory, also as a political value that requires specific institutions that appear only in a democratic state.

The final, fourth part deals with the issue of transnational and global justice in connection with the dispute between the advocates of multiculturalism, who treat this idea as an obstacle to securing agreement between nations, and the followers of cosmopolitanism who take the opposite view. The conclusion contains argumentation inspired by Rawlsian thought, supporting the possibility of the peaceful arrangement of the world on an international scale, which, however, requires the adoption of not only the rational criteria of a just international order but also the political will of global cooperation from both the leaders of states and their citizens. The condition for this agreement is the ethical and emotional political culture of modern democratic societies based on a sense of universal human solidarity. The cautious optimism
expressed in the works of Rawls, Sen, and Nussbaum that these goals can be achieved through proper education, an increasing standard of living, and the development of democratic institutions is an important contribution to contemporary political philosophy and provides inspiration for its further development.
The issues analyzed in this book have been presented at various international seminars and conferences, organized by universities of Aberdeen, Tilburg, Oslo, Hamburg, and Athens. I would like to express my sincere thanks for all the comments formulated at different stages of writing the book, especially to Howard Williams, Bert van Roermund, Barbara Markiewicz, Andrzej Szahaj, and Zbigniew Rau. I would also like to thank the Polish Ministry of Science and Higher Education for financially supporting this project. A debt of gratitude is owed for the translation and language correction of this work to Aeddan Shaw and Tim Churcher.

Part I

THE RAWLSIAN LEGACY
Chapter 1

Liberal Justice

The notion of justice had never been the main subject of interest for the political philosophers and thinkers belonging to the tradition of Western liberal thought until the second half of the twentieth century, when it was introduced at the behest of John Rawls. Was this but a minor addition to the growth and modification of a political philosophy that dated back to the Enlightenment, or was this change more fundamental in nature? It appears that what then occurred was not only a transformation of the concept of liberalism, which from this point onward became known as a socially sensitive philosophy, but the very idea of social justice altered as well.

For Rawls, justice in political philosophy should be seen as the counterpart to truth in science in the sense that it is a supreme value that provides the motivation to seek out and determine the ultimate goal of our considerations.1 It was Aristotle who already stated that we can regard justice as an ethical value, one that contains all others within itself, but it may also be considered in a narrower sense in its application to society as social justice.2 In Aristotle’s conception, ethics and politics were closely interwoven by the notion of the common good and this is why the principles of social justice manifested themselves in a rational and obvious manner. Later developments in philosophy led to political philosophy gaining a degree of autonomy from the considerations of ethics, a move that has its critics in communitarian circles, such as Michael Sandel, who maintains that there is a closer relationship between the two fields. In his book devoted to the notion of justice,3 he attempts to confront the diverse definitions of this concept with real-life situations that call for moral judgments to be made. Sandel’s understanding of justice, as well as that of Alasdair MacIntyre and Charles Taylor, is that it is not a matter for individuals but is shaped by the community to which they belong. Rawls, however, argues that it was necessary to separate moral and
political philosophy because of the cultural and religious pluralism inherent in modern societies. In his understanding, the principles of justice must be acceptable for all members of a society, even if their judgments on particular aspects might differ.

**DESCRIPTIVE AND NORMATIVE APPROACHES**

Contemporary approaches to political philosophy fall into two camps: descriptive and normative. The first camp assumes that political philosophy is a purely descriptive account of political models and phenomena, one that contains no evaluation or hierarchization of their values. The second camp asserts that, although ethics is a purely private matter for individuals, it is still possible to assess and evaluate political phenomena by means of rationally filtering ethical judgments via a procedure of reconciliation.

Rawls exemplifies this latter approach, as do the theories of justice created by his followers, Amartya Sen and Martha Nussbaum, which do not exclude normativity from the realm of political philosophy. They underlie the vital importance of the pluralism of voices in democratic procedures attempting to gain the harmonization of the different worldviews of citizens through the idea of justice. Apparently, this was also the main bone of contention between Rawls and the communitarians, such as Sandel and MacIntyre. The latter accused Rawls of trying to adopt a neutral position, which he felt was impossible to maintain given that every person is inextricably rooted and embedded in a particular system of cultural values that shapes their notion of what is good.

Rawls considered these arguments carefully and made concessions in his subsequent works, particularly in *Political Liberalism*. He then accepted that his theory of justice did not have a universal dimension but was instead restricted to the Western cultural sphere. Nevertheless, he was aware of the need to root ethics and political philosophy on intuitive foundations and on assumptions that were shared by rational agents capable of defining what was good.

These assumptions are themselves based on both moral and political philosophy, the task of which is to develop a theory of justice that transcends particular ethical and ideological systems. While this perhaps leads to something of a discrepancy in the assessment of events that might seem unfair in light of private ethics, it can be defended in terms of the principles of social justice that have been adopted in society. This sometimes leads to unforeseen consequences, such as the example given by Sandel concerning the appeal made by an American university student who had not been admitted to her chosen course of study, despite having secured the requisite points, as a result
of the policy of positive discrimination practiced by the college.\(^8\) In her opinion, it was an unjust decision but, taking into account the broader context and the policy of affirmative action practiced in American society, it is perfectly justifiable in accordance with the Rawlsian principle of social justice.

Indeed, Rawls’ *A Theory of Justice* constituted a turning point in the political philosophy of the twentieth century, since the research on the concept of justice in the liberal framework grew remarkably following its publication. It suffices to mention only the most important works published in the last three decades of the last century by Robert Nozick, Michael Sandel, Alasdair MacIntyre, and Michael Walzer.\(^9\) In turn, a second wave of interest in this issue arose at the start of the twenty-first century,\(^10\) with new publications by Brian Barry and Sandel,\(^11\) and perhaps above all the aforementioned works of Amartya Sen and Martha Nussbaum. In light of the latter, justice ceased to be considered as an abstract theory serving to govern the distribution of goods according to *a priori* principles, becoming instead related to individuals and their living conditions.\(^12\)

**JUSTICE AND THE CONCEPT OF MAN**

The authors of these most recent works on justice do not focus too much on the political structure of a democratic state, nor do they choose to specify the workings of its mechanisms in detail as Rawls did. Rather, it is assumed as a precondition that a just state should be democratic, given that this is the only system that ensures freedom for individuals, and that freedom and justice are ideas that are inseparable in this new liberalism. A just democracy in the Rawlsian sense was meant to guarantee freedom and equality, but a question remains unanswered: What is the significance of the relationship between freedom and justice?

The theories of justice put forward by Sen and Nussbaum deserve special attention in this regard since, although they were undoubtedly inspired by Rawls’ work, they are founded on different principles and rooted in different conceptions of man. First of all, Rawls, referring to Kant, emphasizes the rationality of the individual, whereas Sen, after Adam Smith, stresses moral feelings and imagination. Nussbaum does so in a similar manner, which, in this context, is redolent of Aristotle’s ethical considerations.

In Rawlsian philosophy, man is considered in several contexts and defined in different ways: as a private individual, as an entity possessing given attributes and abilities, as a citizen of a state or as something more abstract, a rational being belonging to a given group in an original position when a social contract is being formed, and where it appears as representative of the parties involved.\(^13\) For Sen, however, man is an empirical being who is not simply
rational but also emotional, one who possesses certain social feelings: the ability to empathize and express solidarity with others.\textsuperscript{14}

Nussbaum, while referring to the concepts of Kant, Rawls, and Sen, is in fact closest to Aristotle’s view of the individual, one in which man is presented as endowed with practical rationality.\textsuperscript{15} Where she differs, however, is that she maintains that the individual is not rooted in a particular conception of the common good but rather realizes their universal human capabilities in a cosmopolitan way. Taken as a whole, the basis for defining man in both Sen’s and Nussbaum’s theories is the concept of the various capabilities with which people are equipped. The concept of an individual equipped with various abilities—rational and emotional, both having a social dimension—flows through their theories of justice.

Freedom, the fundamental characteristic of the individual, or even their basic right in liberal conceptions of man, manifests itself in Rawls as a rational, collective choice in terms of the principles of justice. In Sen, however, it is indeterminate and consists of the ability to formulate and implement preferences and to choose between empirically available options, while for Nussbaum, it is the realization of human capabilities. They all agree that the theory of justice establishes the social and economic foundations for the freedom and dignity of individuals. Thus, justice in this understanding remains closely bound up with the concept of man as a free being, one with the ability to shape collective, political, and social life in an indeterminate manner and without human dignity suffering as a result. Defining what constitutes decent living conditions is thus a task for justice.

For Sen and Nussbaum, and in contrast to Rawls, resorting to a social contract is unnecessary to solve this problem of good living conditions; instead, it suffices to rely on an intuitive understanding of a person’s rights and capabilities, one that should be implemented to the greatest possible extent in a just society. It seems a natural assumption that this country would be a democracy, both as a liberal-constitutional model (Rawls) and as a structure that specifically takes social deliberation into account (Nussbaum and Sen).

In addition to the above, both Sen and Nussbaum have argued that Rawls’ theory has certain limitations that stem from its rationalistic and constructivist approach, and that he does not recognize that capabilities other than reason might provide a sufficient basis for the good life of individuals, nor does he include certain social groups and animals.\textsuperscript{16} These new liberal theories of justice are more open and cosmopolitan, since the concept of capabilities in which they are rooted establishes a basis for the transition from the level of a single society and state to something more akin to a universal or global vision of justice; thus, despite some certain limitations, they indicate that there is a much wider scope for the notion of justice than that afforded by the theory of Rawls.
POLITICS AND ECONOMICS VERSUS SOCIAL JUSTICE

Contemporary political philosophy is defined as a field that focuses on the pursuit of an understanding of the phenomena that occur in politics, economics, and social life in order to establish reasonable objectives for collective action, sometimes even suggesting measures that might lead to the achievement of these goals. Since Aristotle, this issue is part of the wider environs of practical philosophy that are based on assumptions of human nature as embedded in a society. However, it is also connected with the observed facts related to collective life and does not shy away from forming normative conclusions.

It is assumed that the abovementioned concepts—politics, economics, and social justice—are closely interwoven and mutually related. These relations are both theoretical in scope, when they refer to interdisciplinary issues of broadly understood social sciences, and practical, with political and economic decisions being made. The entire structure of political, social, and economic theories, as well as different human decisions, is joined by the concept of collective choices and the theory of public choice, which is one of the most important trends related to this concept. Those choices have a political character since, despite being made by individuals, they are closely related to human groups and collectivities. The methodology of the theory of public choice that is applied in this book to describe the elements of this structure permits the combination of a political and economic perspective in research and, what is more, is a tool that fosters interdisciplinarity and normativism in social sciences.

The question regarding the connection between politics, economy, and justice can be stated as follows: Do such connections occur at all or, conversely, are those fields autonomous? Certainly, scientific theories usually protect the special nature and autonomy of a given scientific field. Economics and political science are separate fields and, in turn, the latter is distinct from political philosophy. However, there is a space where the two fields meet—namely, the sphere of collective, public choices. Thanks to these, one can consider politics or economics as a realm of choices, decisions, and creating and applying rules rather than as frozen, ready entities. Obviously, institutions do not disappear; on the contrary, they accommodate the inconstant structure of ever-changing decisions, but they are perceived as a necessary result and the embodiment of collective choices. What is more, the institutions can be evaluated in terms of either facilitating or blocking public decision-making.

This may be illustrated by the following example: During the financial crisis of 2011, at a European Union summit held by Poland, a particular financial aid plan was accepted. It assumed that all member states would give money to a fund supporting the most indebted member countries by
introducing a financial transactions tax. However, this resolution was con-
tested by economists, who provided arguments that the poorer countries
would be supporting the richer countries of the Eurozone that were in crisis.
The alternative was that the other countries of the European Union were
ready to withhold subsidies for these less rich countries that refused to accept
such a solution. Before the summit, it was said that the Union would fall
apart, and thus ultimately preventing this was considered to be a success of
the Polish presidency. Nobody knew what the political and economic situ-
ation of a particular country would look like were the Eurozone to consoli-
date and return to its former borders. Perhaps the labor markets would have
closed, and both European politics and the state of the economy would have
returned to the 1990s.

While analyzing this situation, it is worth considering which arguments are
important and who has the greatest weight in this debate: the politicians or
the economists? The models offered by decision theories may be particularly
instructive here, especially the prisoner’s dilemma as interpreted by David
Gauthier. He stated that in the case of decision-making situations under
uncertain conditions when nobody knows how the second party would react,
one has to assume cooperation, an event in which the cost of a sacrifice is to
be borne, and where one must abandon the notion of immediate benefit, while
expecting to achieve more in the long term. However, in this particular case,
if we all acted like this, we would have to bear the cost of rescuing richer
countries, which is not in our interest as it is conceived in terms of economic
rationality. Therefore, since we cannot unequivocally rely on the theories of
rational choice, we have to refer to political philosophy and the idea of justice
as applied within society and international politics.

At this point it is worth recalling that the European Union was created
after World War II and its goal was to ensure peace in Europe through both
economic and political cooperation. The idea expressed Kant’s theory of
humanity as one that would gradually unite itself into a federation of nations,
a condition for world peace. During the aforementioned 2011 crisis situation,
people realized that the potential disintegration of the Union would leave the
militarily and economically weak countries on their own; therefore, economic
arguments were outweighed by political arguments and an agreement was
possible.

Furthermore, apart from world peace, an important goal of contemporary
countries is social justice that refers to the idea of humanity and brotherhood
between people. This argument prevented the deepening of the Greek crisis
a few years ago.

In the current pandemic situation, governments are planning joint actions
to combat the economic crisis. These examples prove that justice, when
understood internationally, connects politics with economics, since it is a
superior instance of defining political and social priorities in the perspective of human goals. Philosophical deliberations on the problem of justice are more than a mere academic discussion since they allow us to solve disputes between economists and politicians and evaluate the importance of the arguments presented in a broader philosophical scope, namely the peaceful development of societies and the increasing of space for individual freedom in them.
Chapter 2

Ethics and Political Pragmatism

Political philosophy in the twentieth century has become an autonomous discipline, one that is not only distinct from philosophy but is also separated from ethics. This process was gradual and consisted of the transition from the great concepts of antiquity that were created by Plato and Aristotle, those that emphasized the close relationship between political philosophy and ethics, to the liberal theories of modernity that stressed its autonomy. Thucydides had already posed the question of whether politics involved moral questions and the norms of justice. This was also the starting point for the deliberations on justice that were presented in Plato’s Republic. In the centuries that followed, this issue recurred both in political philosophy, when it was considered whether political phenomena and processes should be analyzed in isolation from ethics, and when they were referred to political practice, raising the question of whether politics should be pursued by applying the directive of efficiency.

The term “political pragmatism” that is used in this work is a position in political philosophy that lies between political realism and idealism. It differs from political realism in that it does not reject the ethical evaluation of political phenomena. It is distinct from the perspective of political idealism and utopianism by means of its lack of doctrine because it does not assume that there is a perfect and ethically justified model of politics to which reality should be adjusted but permits various political systems and political actions, taking cultural, economic, and social differences into account. The concept of political pragmatism is not a coherent political theory but rather a research program proposed by Imre Lakatos, who expounded the idea that any thesis is subject to corrections and modifications when confronted with reality. As its basis, on the one hand, it adopts certain theoretical assumptions—a rational theory based on values—and on the other, the empirical reality.
This deductive-empirical basis for deliberations is a characteristic feature of the research method employed in the works of Rawls, Sen, and Nussbaum. The groundwork for this position was made by Rawls in his latest book, *The Law of Peoples*, where he writes about a realistic utopia and where he applies this to the analysis of international politics; but in his earlier works, and especially in *A Theory of Justice*, he presented instead a form of political idealism, constructing an ethical ideal of justice and using it as the basis for the creation of the political structure of a well-organized society and optimal model of the state. In *Political Liberalism*, however, he concluded that this model of democracy had no universal meaning but rather that its validity is limited to the cultural environs of the Western world and in *The Law of Peoples*, he definitively resigned from the utopian vision of the world state and instead outlined the concept of a realistic utopia. It is important to realize that this is not just a variant of realism since it does not mean the total eradication of values from politics and the possibility of assessing political phenomena from an ethical perspective. According to Rawls, it is also unacceptable to agree with the views expressed by various social groups on the concepts of the good or justice which they profess; such a practice, while an easy method to apply, is ineffective way to reach agreement on the principles that must be derived from rational reflection.

Rawls breathed new life into the political philosophy of liberalism and established a different paradigm from former essayistic considerations, which constituted the majority of works in the history of political thought. After Rawls it became a research discipline with a clearly defined subject and method. It was due to him that the political philosophy of the second half of the twentieth century gained a strong impetus for further development; many works continued and developed his concept of social justice, among them the theories of Sen and Nussbaum. This inspiration came about through direct contact as Sen worked under Rawls and the political philosophy of Nussbaum was influenced by both Rawls and Sen. These three are the most typical representatives of the trend of *political morality*, which is termed here as political pragmatism.

This position does not have much in common with the orthodox understanding of American pragmatism or the concepts of John Dewey, who practiced political philosophy on the basis of pragmatist rules; instead, it is an approach that does not abandon the rational investigations of the theory supplemented and adapted to the current cultural and social conditions. This type of pragmatic attitude is mostly attributed to American society, its political life, and the mentality that prevails in the country. This was noted by Alexis de Tocqueville when he wrote of the American reluctance to engage in philosophical and rational speculation alongside their fondness for independent thinking and formulating independent judgments based on their
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own experience. The only limitations to this freedom are Christianity and, above all, the moral truths propagated within it and which Americans accept without reservation as a sort of axiom. Tocqueville also noted that Americans as a society are believers and treat values as a basic element of their culture and religion, one that is kept separate from politics. It allows them to modify their political institutions without getting involved in religious or ideological disputes.⁶

He himself adopted a method similar to the political position of pragmatism presented here in his study of American society. In Democracy in America he presents a certain model of democracy as the example of this society, a particular attribute of which is egalitarianism. Yet, as Jan Baszkiewicz has written in the introduction to the Polish edition of the aforementioned work, “The author did not stop at defining the goals to which the egalitarian society is heading, and the values it professes. . . . To his vision of a democratic society, Tocqueville brings his own network of values. And he believes that it is possible to ‘train democracy’, that is, to adapt it to those values that are close to him.”⁷

Political pragmatism defined in this manner is a position that is determined both ethically and, in a broader sense, axiologically. The philosophers who represent it do not abandon the role of values in the sphere of politics and its evaluation in moral terms, although they do not lapse into moralizing. They do not assume any concept of good in advance that would determine their assessment. To some extent, they recognize the relativity of assessments and values according to the given religious and cultural background while, at the same time, they do not seek to absolutize this diversity since they believe that certain basic values that are related to human life and activity are universal. This makes it possible to define these positions as cosmopolitan in the broadest sense of the word.⁸

Cosmopolitanism manifests itself above all in the fact that Rawls recognizes certain human properties, such as the ability to determine one’s own goodness and rationality as universal and intuitively obvious.⁹ Sen, in contrast, strongly rejects the notion that there are radical differences that might separate a culture, for example, the cultures and traditions of the East, and result in an inability to accept the values and political tools developed in the Western tradition. Nussbaum occupies the most extreme position of the three; postulating a form of cosmopolitan education and maintaining that respect for certain basic universal values must be instilled in young people in the process of their education. Such an education should not, in her view, amount to indoctrination but rather awakening and sharpening a sensitivity toward the fate of other living beings: people, animals, and plants.

The clear tendency observed in the political philosophy and economics of the twentieth century to separate these disciplines from ethics has
transformed economics into a theoretical science, one that is close to mathematics, while political philosophy has focused on analyzing human choices using decision and rational choice theory (in theories of social and public choice as well as interest groups), thus bringing it closer to political science. This kind of dehumanization of these research disciplines, which relates to their field of practice, resulted in abandoning moral values in collective decisions and a growing consent for unethical activities in the fields of politics and economics. This was discerned by scholars representing the theory of public choice, such as James Buchanan, who modified his research approach and created—as a subfield of this theory—a constitutional political economy that permits valuation.  

In the theories of Rawls, Sen, and Nussbaum, however, one can observe a return to the traditional practices of political philosophy since they assume a conception of man as an entity possessing dignity and therefore one that requires that the state and its political, economic, and social institutions adapt to meet its needs. The dignity of the individual establishes the basis of their political theories in which well-being is something of a practically understood attribute that is not understood in a hedonistic manner but rather as one that enables individuals to realize their freedom (Rawls) or specific capabilities (Nussbaum and Sen).

The notion of dignity is in fact the foundation of Rawls’ philosophy, one that the justification of any theory of justice ultimately amounts to serving. This is evident when we reformulate the concept of justice as fairness by expressing the two principles of justice in the form of a question: Why should every human being have equal shares in rights and freedoms, and are inequalities only justified when they improve the situation of the poorest? The answer is as follows: this is because humans possess a dignity that justifies their freedom and ability to act and organize their lives in society. The term “dignity” does not often appear in the works of Rawls, but the philosopher adopts this notion in an obvious manner by creating the concept of liberal justice. Discussing this, Richard Bellamy and Martin Hollis observe that while Rawls stresses the political nature of his concept and moves away from traditional ethics in order to avoid being drawn into metaphysical theories, he essentially adopts a certain conception of man and fails to free himself from the accompanying metaphysics. This accusation, however, does not seem justified since the concept of a man as a being endowed with dignity in the Rawlsian system leads to the construction of a rational theory of justice, which—like any such theory—must be based on certain assumptions. Certainly, it differs from the concept of Kant, who understood the moral subject as a metaphysical category, while Rawls, speaking about the subject, treats it as a theoretical construct that is necessary for the emergence of justice as fairness.
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Sen and Nussbaum consider dignity in their theories of justice as a trait that is related to the nature of man, an entity that is living here and now in a particular society and state. This notion plays an important role in Nussbaum’s theory of justice and also serves to derive particular practical actions from it, primarily to justify the claims made by individuals with regard to the state and the normative assessment of political systems.

On the one hand, human dignity makes it possible to distinguish Sen and Nussbaum’s positions from Rawlsian political liberalism on the basis of their axiological characterization since they take into account not only values such as freedom but also freely enter the sphere of moral philosophy. On the other hand, Rawls, Sen, and Nussbaum are opposed to the kind of extreme cultural relativism that typifies Rorty’s thought.12

THE PRAGMATISM OF RICHARD RORTY

When describing and typifying political pragmatism, one cannot ignore Richard Rorty, a contemporary philosopher who developed the tradition of American pragmatism in an original way. He himself subscribed to this tradition despite the fact that, as he wrote, this position is considered obsolete in the opinion of contemporary philosophers, rooted as it is in the soil of the provincial atmosphere of the nineteenth century. He interpreted pragmatism, and the concept of truth developed within this philosophy, in relation to human action. Since this itself always has a communal dimension, the truth is historical and relative in his view because it refers to a particular culture. In pragmatic philosophy, there are no universal (going beyond individual disciplines of science) or transcultural criteria that would apply to all people. Thus, pragmatism understood in this manner goes beyond the dichotomy of Platonism and positivism, which is a characteristic feature of modern philosophical thought according to Rorty.

The pragmatist . . . thinks that the quest for a universal human community will be self-defeating if it tries to preserve the elements of every intellectual tradition, all the “deep” intuition everybody has ever had, it is not be achieved by an attempt at commensuration, at a common vocabulary which isolates the common human essence of Achilles and the Buddha, Lavoisier and Derrida. Rather, it is to be reached, if at all, by acts of making rather than of finding—by poetic—rather than Philosophical achievement. The culture which will transcend, and thus unite, East and West, or the Earthlings and the Galactics, is not likely to be one which does equal justice to each, but one which looks back on both with the amused condescension typical of later generations looking back at their ancestors.13
Pragmatic truth ultimately does not rely on the discovery of a relationship between judgments and things but rather on the making of a choice between their alternative renditions. This issue, according to Rorty, “is not going to be resolved by any sudden new discovery of how things really are. It will be decided, if history allows us the leisure to decide such issues, only by a slow and painful choice between alternative self-images.”

Despite his ties to American pragmatism, Rorty is also a liberal philosopher that one may ascribe to the group of continuators of Rawls. This continuation, however, has been made by interpreting Rawlsian theses in the spirit of contemporary communitarianism and neopragnatism. As a political philosopher, Rorty stands firmly in the ranks of the political pragmatists, philosophers who have focused their attention on practical actions rather than purely intellectual speculation.

A good example that illustrates this twofold inspiration is the essay *Justice as a Larger Loyalty*, in which Rorty expresses his dependence on Rawls’ concept merely by taking up the issue, while appealing in an original manner to the nineteenth-century American tradition of community pragmatism by utilizing the idea of loyalty from Josiah Royce’s work. This philosopher described his idealistic concept as pragmatism because he believed that the justification of idealistic postulates is a practice that influences the content of philosophical ideas.

In contrast to Royce, who investigated the antagonism between different forms of individualism and loyalty to the community, Rorty transferred this idea to a different level of consideration, preferring to analyze the problem of an individual’s loyalty toward the different social groups with which they retain relationships. He proposes replacing the notion of justice with the wider one of loyalty, one that transcends family ties or anything that connects the individual with their immediate environment. Considering the concept of justice in both its universal and global dimensions, as Rawls did in *The Law of Peoples*, Rorty underlines the fact that Rawls assumes the existence of a moral community of people in which the idea of justice is to be realized in the supranational dimension. (A similar assumption may be discerned in the work of Kant.) However, he recognizes the difficulties that accompany any justification of this concept, as evidenced by the polemic between Jürgen Habermas and Rawls regarding the possibility of demonstrating the universality of this idea and its rational justification.

The reinterpretation of the tradition of the Enlightenment that Rorty postulates reveals his resignation from the exclusively rationalist model in favor of extracting and accentuating the emotional themes to be found within this epoch. Rorty, ever the pragmatist, concludes that the effectiveness of this argumentation, intended to diffuse democracy throughout the world, would be increased not for the fact that it holds to the transcendental nature of values...
that are rooted in Western culture. On the contrary, the attractiveness of these values lies in their ability to lead humans to attain well-being (in the sense of a good life).\textsuperscript{18}

It seems that the efforts of Sen are in a similar direction, particularly in his arguments against the notions of Samuel Huntington and the radical communitarians about the uniqueness and incompatibility of cultures; both positions claim that there are fundamental divisions between civilizations and that this leads to their inevitable conflict.\textsuperscript{19} According to Sen, while cultures are different, it does not mean that they do not have certain elements in common or that they are unable to accept new values and content from other cultures.\textsuperscript{20} In addition, both Sen and other contemporary historians and philosophers, such as Annette Baier, Emma Rothschild, and Martha Nussbaum, may be ascribed to the current reinterpretation of the Enlightenment (in the sense of Adam Smith) as a tradition in which emotional themes are present, above all in moral philosophy, and influence the political philosophy and economics of the period.\textsuperscript{21}

**MORAL VALUES AND POLITICS**

Sandel also belongs to the group of contemporary thinkers practicing political philosophy that is based on moral values. He began by criticizing the theory of justice advanced by Rawls in order to subsequently put forward his own notions of this issue. While not questioning the necessity of public debate over this notion, he nevertheless rejects the idea that the Rawlsian category of public reason plays a key role in this debate. Instead, like Aristotle, he believes that the concept of a good life should be included in any public debate on justice. This is, in his view, a return to the ancient ethical thought in which the reflection on the good of individuals is closely connected to the good of the community to which they belong.\textsuperscript{22}

Sandel criticizes the postulate of neutrality advanced by both Kant and Rawls, which, according to him, consists of the radical separation of politics and law from ethics and religion. He believes that this postulate cannot be implemented in practice and thus, in his view, ethical issues should be the subject of public discussion and be included in any debate on justice. Above all, moral ideas should be introduced into debates on economic and social issues, so the question of justice is not simply reduced to defining the principles of the distribution of material goods but also includes the spiritual dimension of human life.\textsuperscript{23} The main drawback to this concept is, however, the inconsistency of the proposed solutions and, as in the case of Rorty, the inconsistency of relativism. It is unclear to what extent an individual is autonomous with regard to their community; if the debate concerns the issue of justice within a
certain community, and is intended for it, and the individual is constituted by
the community in the axiological sense, the outcome of the debate is actually
already decided and there is no possibility of making any progress in terms of
resolving social issues. A similar problem arises in MacIntyre’s philosophy,
which encloses the individual within a circle of community values and fails
to indicate a convincing factor that might be a driver of change.

Rorty is also a part of this communitarian trend since his theory of justice,
although stemming from pragmatism and accentuating cultural content, is
diametrically opposed to the concepts of Rawls, Sen, and Nussbaum. On
the one hand, the concepts of Sen stem from the traditions of the Enlighten-
ment, referring in different ways to the moral philosophy of Smith. Rorty,
on the other hand, puts himself firmly in a different camp by referring to the
historicism of Hegel, since his political philosophy is an example of extreme
cultural relativism and, at the same time, makes man dependent upon forces
that are beyond him and which are of a historical character; in his view, man
is entangled in something upon which he has no influence. The communitar-
ian nature of Rorty’s philosophy cannot be reconciled with the liberal tradi-
tion to which Rawls, Sen, and Nussbaum belong. All three recognize cultural
conditions to a certain extent but hold that they do not determine the behavior
of an individual, one who takes priority over the state and society and is also
capable of distancing himself from the local culture.

LIBERALISM AND POLITICAL PRAGMATISM

Perhaps all of these concepts may be contained within a broadly understood
notion of liberalism derived from the traditions of the Enlightenment, yet this
concept is ambiguous. Political liberalism, on the other hand, is a term coined
by Rawls in reference to his political philosophy, especially that of the later
period. Moreover, in the sense given to it by Rawls, political liberalism is dis-
tinct from ethical issues, while the concepts of justice or freedom are defined
on purely political grounds, setting it apart still further from the ideas of Sen
and Nussbaum. These theories—the later political thought of Rawls, as well
as the political philosophy of Sen and Nussbaum—arose in response to the
communitarian critique of liberalism. To some extent, all three of them take
into account the criticisms made at that time, although their creators distance
themselves from the famous dispute between liberalism and communitarian-
ism that took place in the 1980s. Recognizing the importance of cultural con-
ditions, they do not overestimate them and disagree that community values
should determine the choices of the individual.

The use of the term “political pragmatism” to describe these theories seems
more capacious since it allows us to distinguish between those that are rooted
in Rawlsian theory and those stemming from pragmatism, the philosophical trend that arose at the turn of the nineteenth and twentieth centuries. Moreover, the term makes it possible for us to distinguish Sen and Nussbaum’s positions from Rawlsian political liberalism on the basis of their axiological characterization since they not only take into account values such as freedom but also freely enter the sphere of moral philosophy. On the other hand, Rawls, Sen, and Nussbaum are opposed to the kind of extreme cultural relativism that typifies Rorty’s thought.

Sen and Nussbaum’s theories of justice continue Rawls’ research program in an original way; this originality stems from the fact that they do not develop some of the threads of his theory as others do, but they prefer to propose their own solutions that are in fact in conflict with the work of Rawls. However, this conflict is to be discerned on the common ground of the assumptions that they share. Thus, first and foremost, Rawls, Sen, and Nussbaum all believe that society is a set of individuals who join together in order to attain mutual benefits. Even though these individuals perceive the communitarian character of this association, they do not place the good of the community above their own. Second, they all adopt a liberal concept of the individual as a free and responsible being, while society and the state are institutions designed to best serve the unique purposes and capabilities of individuals.

The similarities end there, however, and the differences primarily relate to the concept of man, which they adopt. The basis of Rawls’ *The Theory of Justice* is the concept of a person, which is understood not as a concrete, real person but rather as a theoretical construct representing a group. This human being possesses a number of important abilities: to make rational choices and to have their own conception of goodness, by means of which they represent the social group. Thus, as a group representative, this rational being establishes two principles of justice in the social contract, which ensure that any society based on them will secure the well-being of all members of its groups. In *Political Liberalism*, Rawls moves to more concrete ground: on the one hand, he situates a “representative person” in a moral, religious, and social context while, on the other, he focuses his attention on the functioning of the liberal state, in which its institutions attempt to obey the principles of justice. *The Law of Peoples* makes even greater concessions to political practice, where the subjects to the contract are peoples who aim to establish the rules of law of peoples, namely the principles of the peaceful international coexistence of nations on the basis of the idea of justice. In each of these works, Rawls considers a representative collective entity, even if he refers to it as a person, and this subject is needed for theoretical purposes, namely the construction of the principles of justice.

The theories of Sen and Nussbaum, however, present a different entity, one that is empirical and reflect human beings as they really are. Both of
them find fault in this regard with Rawls: Sen highlights the simplifying and
reductionistic character of his concept of man, as it is one that reduces man’s
motivations to one or two factors, emphasizing instead that the construction
of a political or economic theory should take into account the whole com-
plexity of human motivations and the fact that, alongside rational factors,
emotional and moral qualities (such as compassion and commitment) are also
important. This accusation applies not only to Rawls but, above all, to the
theory of rational choice that underlies these types of models.27

Nussbaum highlights a certain absence in Rawls’ theory of justice, namely
that it does not take into account disabled people and, above all, those with men-
tal disorders. Furthermore, in her conception of justice, she proposes extending
the scope of justice to encompass all living beings, including animals.28

To sum up, the concepts of Sen and Nussbaum may be differentiated from
the rationalist theory of Rawls by means of their empirical approach to the
question of justice but, nevertheless, these philosophers remain firmly within
his conceptual framework and merely attempt to rehash problems that had
already been discussed by him since they believe that a more convincing out-
come can be found on the basis of the theory they outline. Also, they consider
the issue of justice in the world in a similar manner to Rawls and think that
its introduction is a precondition of world peace. They share Rawls’ particu-
lar cosmopolitan position in this regard, while they believe that this will not
happen as a result of the construction of rational theory of global justice but
rather on the strength of practical decisions.

Thus, although Rorty’s and Sandel’s approaches to the problem of justice
were certainly inspired by Rawls’ theory, they clearly take issue with it. Al-
though it is also pragmatic, in the sense that both philosophers move from
the observation of facts to the formulation of general principles that ultimately
apply in ruling the state, it differs radically from the concept of political prag-
matism defined here. This difference is primarily based on the understanding
of an individual’s autonomy and their relationship to society. In the works of
Rawls, Sen, and Nussbaum, the individual is considered prior to the collec-
tive and is able to influence its shape. Sandel and Rorty, in turn, subordinate
the individual to the collective and historical, supra-individual processes. The
cultural and community element introduced by them has already entered the
debate on democracy, but it has not become the main motivating factor and
determinant of human thinking and action in the concepts of Rawls, Sen, and
Nussbaum. In these conceptions, which were developed on the basis of the
Enlightenment belief in the possibility of the social and economic progress
of humanity, an element of relativism is present, although it does not take an
extreme form. The basic axiom of liberal anthropology, namely the freedom
of the individual, is connected with the human ability to think rationally and
act responsibly.
Part II

IN THE CIRCLE OF THE IDEA OF JUSTICE
Chapter 3

The Idea of Social Justice

From Utopia to Political Practice

Justice is an ethical category, while the notion of social justice is a political category that also has an ethical dimension. Yet the idea itself is abstract since it is a concept that is constructed by philosophers and only then applied to reality. In this sense, the idea of social justice can be described as utopian since the goal of almost every utopian vision of a perfect political regime is to show the possibility of the existence of a just society. From Plato to John Rawls, philosophers have sought a rationalized and defined concept of justice, which makes it firmly linked to the social and political reality.

What lays behind these efforts? The purpose was to change the negative state of the contemporary reality they found themselves in. Thus, in their deliberations on justice, a primary function of justice is the perceived ability to change and shape the existing state of affairs. In this respect, however, there was a clear change between Plato and the present. Plato and the Renaissance utopians did not believe in the pursuit of a utopian vision but rather they presented a perfect model or image of society, which allowed them to assess the contemporary reality around them by comparing it with this perfect form. However, a belief that it was possible to realize a vision of a perfect society in the future through human efforts became widespread from the Enlightenment period onward. This is why current formulations of visions of the future are no longer properly utopian, since faith in the ability to realize even the boldest ideas, both positive and negative, has become commonplace and the boundaries between reality, utopia, and science fiction have become blurred.

At this point, a question arises: Is an empirical approach possible in addition to this rationalistic approach? Could we say that individuals in society know what justice is and strive to secure it when it is threatened, and when the society around them is obviously wrong? For example, in Poland during the communist era, which was a kind of realized dystopia, did the people who
resisted this vision and tried to overthrow it realize that they were fighting for justice?

It seems that this kind of awareness was far from widespread. Rather, the participants in these events perceived the injustice that surrounded them in their social and political life, together with its concrete manifestations. The actions of the opposition of the time were rather undertaken in the spirit of the recommendations of K. R. Popper, who proposed in the essay *Utopia and Violence* that one should fight against a particular evil, rather than for an abstract social good, with the attainment of happiness being left to the efforts of individuals. An example of this approach can be discerned in the August Agreements of 1980, which not only included practical demands in the reduction of working hours and free Saturdays (they were working too much) and the introduction of food rationing (this was felt to be missing) but also demands concerning the freedom of association, expression, and religion. These were freedoms guaranteed by the Constitution and also in the international conventions that the socialist state had subscribed to yet were manifestly infringed upon and ignored. An attempt was thus made to combat the specific and commonly perceived manifestations of injustice in both the economic and political spheres. Inherent within this, one can discern the conviction that, if these injustices were to be eliminated, life in a better and fairer society than the present would await us.

The idea of justice was not particularly stressed or placed to the fore, far more important was solidarity, the collective sense of fellowship that was fighting for a better tomorrow and which was united in this goal. A transformation of public awareness occurred in the early 1990s, when the country underwent a profound political and economic transformation. After the overthrow of communism, a utopian belief arose that we were entering a new era of capitalism and democracy and that this would lead to a fair regime that would bring freedom and prosperity to all. This was broadly true, but when power and other goods did not suffice for everyone, conflicts and political struggles arose over the distribution of privileges and possessions. On the one hand, we could see the infighting between the politicians of the Solidarity movement and, on the other, an unhappy society, frustrated that the political transformation proceeded at a faster rate than the economic, and that they had to continue to wait to enjoy the fruits of the economic reforms. This impatience and dissatisfaction translated itself into a negative assessment of democracy.

A new phenomenon that emerged in society was inequality. The socialist egalitarianism declared in the system allowed the diversity of income, but the differences in earnings between the elite—the ruling party members—and ordinary citizens were not large since all were employees of the state who were paid at agreed rates. In a market economy system, things functioned
very differently. The system that was formed after the war in Western countries functioned according to the principles of neoliberalism, a philosophy that did not attach much importance to egalitarian values. This issue only became a subject for reflection among philosophers of the left-wing branch of liberalism at the end of the twentieth century in the context of the discussion of the concept of social justice. After the appearance of Rawls’ *A Theory of Justice* in 1971, the academic world embarked upon a debate that encompassed everyone from libertarians (R. Nozick), to communitarians (M. Walzer), and even proponents of Marxism (G. A. Cohen). The main topic of discussion was the problem of inequality and it was raised at many conferences and in publications appearing in the 1980s and 1990s. Today, however, this issue has become the single most important problem in political philosophy and political economy in a world confronted by the social, economic, and political inequalities that have risen sharply as a result of the process of globalization.

In light of this, it is perhaps understandable that new works from the leading liberal political philosophers on the issue of social justice have been published in the twenty-first century, including *The Idea of Justice* by Amartya Sen and Michael Sandel’s *Justice: What’s the Right Thing to Do?* They were in answer to perhaps the defining challenge of our age for liberal philosophers, namely to solve the problem of inequality. The political philosophy of Amartya Sen stems from the liberalism of Rawls and also from the theory of social and public choice. In addition, he has authored numerous economic and philosophical works devoted to the issues of inequality, freedom, and democracy. Sandel, although he repeatedly clashed with Rawls, followed him by taking as his subject the social problems of modern America, proposing methods for their solution. Both Sen and Sandel, nearly forty years after the publication of Rawls’ *A Theory of Justice*, have tried to redefine the notion of social justice, adapting it to the needs of the time. Reflecting on their concepts of social justice, we must assume that these theories, despite being created on the basis of American realities and the political and economic situation of the countries of the Western world, also refer to the countries of Central and Eastern Europe. Since they belong to the European Union, they remain firmly in the circle of the political and economic ideas of the West, and political and economic liberalism shapes their reality.

**WHY DO WE HAVE THE NOTION OF SOCIAL JUSTICE?**

This question was posed by Leszek Kołakowski in an essay written many years ago, in which he argued that this concept is purely moral and should not be defined in economic terms because it cannot be used to create economic...
policy or to form an effective tax system. He did not reject this category, however, as the more extreme liberals chose to, but instead claimed that this concept should be rooted in anthropology and an ethics that encompassed all of humanity. In the spirit of Kant, he demonstrated that we could not reject this notion entirely since we belong to a broader community—humanity—which is a moral category. In the name of this kind of ethics, we should organize social programs both nationally and globally, such as providing aid for countries experiencing famine. In a similar vein, some American liberals, such as James Buchanan and John Rawls, argue that it is also necessary to construct an “ethics of claims,” which determines which kind of claims are justified and which are not. As Rawls observes, however, social justice can no longer be defined on the basis of individuals but only by considering the rights of social groups, unlike in Aristotle’s time. Kołakowski therefore saw the need for a moral idea of justice in the modern world and outlined how it might function, while John Rawls demonstrated how it was possible to transfer this idea to the political philosophy of liberalism.

Yet another question arises: Does liberalism gain anything from the introduction of this idea? Undoubtedly, the answer is positive. On the one hand, liberalism dominates contemporary political philosophy and economics and performs much better than socialism when applied to economic policy, yet the existence of inequalities in even the most economically developed countries, such as France, causes citizens to protest on the streets, demanding changes to this policy. On the other hand, it must be noted that the idea of justice, which has long been present in Christian philosophy and in politics that is linked to left-wing political theories, is increasingly becoming the sole preserve of liberal thought since the idea of justice in left-wing, socialist programs and ideologies—of a vision of a perfectly just regime such as communism—proved to be a chimera in its utopian application. By combining it with a liberal, nonutopian approach, this moral-political idea can indeed be used to develop ethics of claims as well as political thought that is more firmly rooted in practical problems. An example of this approach to justice is the philosophy of Amartya Sen.

**THE IDEA OF JUSTICE IN LIBERAL THOUGHT**

The idea of social justice, although defined and described by Aristotle in his *Nicomachean Ethics,* only became a political watchword in the nineteenth century in the service of left-wing ideologies: socialism and anarchism. Their purpose was to bring about revolution and to radically change the reality of the time. Previously, this concept was a pillar of almost every literary utopia, and thus a vision that seemed impossible to realize. It was only after the
French Revolution that the attainment of utopias gained currency and the idea of a fair society constructed along ideal lines emerged above ground. It became regarded as a viable model for the future and a purpose for collective action.

The ideas of liberalism that are to be found in the culture of the modern European era were introduced into the political and economic life of Western countries in the nineteenth century. Then they became the subject of increasingly severe attacks from the left. The socialists criticized both liberal economics and its social and political implications; they stressed that the principle of free competition leads to wealth inequalities and the unequal social status of individuals and groups. Responding to these allegations, liberals like J. S. Mill proclaimed the need for gradual reforms that would broaden and extend freedoms in society, especially political freedoms, whereas in the economic sphere, they permitted the restriction of the freedom of markets to some extent in order to address inequalities. While the advocates of classical liberalism (Mises, Hayek, Nozick) remained undefeated in the twentieth century, American liberalism became identified in the second half of the century with the concept of John Rawls. After the publication of his famous work, the idea of social justice could no longer be ignored. Even so, opponents of this notion clashed with Rawls for many years. Appealing to classical liberalism, these philosophers claimed that the idea of social justice was a relic inherited from earlier primitive society and is inapplicable to our present civilization (Hayek). Libertarians (such as Nozick) stressed the impossibility of the simultaneous realization of the ideals of freedom and equality in society, stating that the implementation of distributive justice would lead to slavery and drastic reductions in freedom. Similar arguments were raised by Ludwig von Mises and Friedrich von Hayek in their critiques of the socialist economy. In turn, communitarians (such as Walzer) criticized the abstract and doctrinal nature of the Rawlsian idea of justice and tried to describe this issue in light of their own concept of society. However, Rawls ultimately enjoyed victory over his opponents because the idea of social justice had become permanently rooted in the political philosophy of liberalism. In his subsequent works, he took some of their allegations into account and modified his concept of justice somewhat, and in his last book, he attempted to shift the principles of justice from the plane of the nation to the international community and the whole of humanity.

These fairly brief and fleeting historical remarks lead to the conclusion that, first, liberalism is compelled to tackle the problem of justice and its accompanying social inequalities, and second, there can be different concepts of social justice within the liberal thought—those which refer to the various traditions that are to be found within it. This explains the differences between the concepts of Sen and Sandel as well as those between both of
them and the theory of Rawls. Each of them contains an original concept of social justice, but Sen’s *The Idea of Justice* deserves our special attention.

**THE IMPARTIAL SPECTATOR OF ADAM SMITH AND THE RAWLSIAN JUSTICE AS FAIRNESS**

Robert Nozick, stressing the importance of Rawls’ theory of justice to modern philosophy, argued with Rawls, putting forward in its place a competing libertarian concept of justice, but both of these theories were characterized by a rationalistic approach to social justice. Both philosophers considered this issue to be a purely theoretical and deductive matter and, on this basis, adopted a concept of justice that constituted a justification for the democratic-liberal state (Rawls) or a radical free-market regime (Nozick). It was, therefore, a kind of academic discussion between the two philosophers, which showed that their preferred political configuration could be justified on the basis of a certain concept of justice; in the case of Rawls, this was justice as fairness, while in the case of Nozick, it was the entitlement theory.  

In a sense, this manner of thinking stretches back to Plato, who contemplated justice in his *Republic* in an ethical dimension—in reference to both individuals and politics—in relation to the state in order to describe the nature of the perfect state, which was based on the correct understanding of justice. Contemporary philosophers do much the same—they consider the question of justice in close connection with a specific structure of the state, which bears a particular principle of justice. However, unlike Rawls and Nozick, Sen approaches this issue differently by using empirical methods and referring to experience and observation as tools to uncover the idea of justice.

Sen reaches out to Adam Smith for inspiration, not to his classic work *On the Wealth of Nations* (1776) but rather to the earlier work of the Scottish philosopher, *The Theory of Moral Sentiments* (1759) and especially the notion of the impartial spectator. He claims that the fundamental category of fairness in the Rawlsian theory of justice can also be attained by means of empirical methods. To this end, there is no need to appeal to the theory of a social contract, as Rawls does. Instead, in accordance with the work of Adam Smith, it suffices to adopt an impartial spectator that acts in the world rather than, as in the approach of Rawls, in a purely theoretical original position. In both cases, however, as Sen emphasizes, the assessments come from outside the person responsible for evaluating and deciding, which avoids any accusations of extreme relativism and subjectivity. The concept of the impartial spectator created by the Enlightenment Scottish philosopher can therefore be interpreted as a reflection—a hypothetical individual who determines things in a deliberate, consequential manner and considers the real concrete situation in
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which it acts. In light of the interpretation of the deliberations of Smith made by Sen, we see that a hypothetical original position similar to that described by Rawls can be secured in a different way and impartial judgments can be attained empirically; this is an essential difference in approach to the typical rationalist strategy adopted by the American philosopher.

Following on from Smith’s ethical notion of the impartial spectator, Sen extends its reach and derives a theory of social justice from it. Considering this notion of Smith, he introduces the concept of *open impartiality*. This is a sort of hierarchical arrangement of views outside of the individual, as well as an attempt to establish the “enlightened meaning” of the views held by the individual, which does not appeal to an abstract idea of humanity but rather to the concept of other people and social groups. By comparing them, it is possible to make an assessment of them and then take action. These external views are perhaps not entirely coincidental and, after reflection, a person should be able to hierarchize them.15

Sen notes that Smith was not a utopian, since he was not interested in formulating a concept of a perfect society but rather the ordering of the world that we discover through rational thinking. These are the principles of natural law that, according to Smith, ultimately bring us to the idea of God as the creator of the natural order in the world. However, Sen draws our attention not to the objective in this line of reasoning but rather to the procedure itself; the evaluations achieved by a specific ranking of many points of view, and the purpose of this procedure is to enrich public reasoning about justice and legal norms.

Sen is also not a utopian, since he believes that we should not expect too much from using this procedure, for example, that it will lead to the creation of a perfect society, or that a perfect society can be defined and unanimously accepted. This position is therefore different from the concepts of Rawls and James M. Buchanan, who believed that the possibility of attaining unanimity was justified in special cases, such as in the context of the emergence of the principles of justice (Rawls) or in the setting of constitutional rules (Buchanan). However, as Sen observes, in *Political Liberalism* Rawls also goes beyond purely formal modeling.

It should be emphasized here quite how innovatively Sen interprets the notion of an impartial spectator, in comparison to other modern philosophers such as Rawls or Charles Taylor. For example, in Taylor’s conception, an impartial spectator symbolizes faith in the possibility of knowing the principles of natural law objectively, which in the course of the development of civilization are transferred from the external world, where they were established by God, to the heart of man, consequently opening the way to the secularization of the modern world. Even though the Canadian philosopher recognizes that the concept of Smith should be seen against the broad background of the
philosophy of culture and philosophy of religion, in the framework of a social
*imaginariu*m, he accepts that people have the ability to intelligently grasp
the situation in which they find themselves, and thus there is a certain way in
which we can objectify the empirical context. In turn, this aspect of Smith’s
concept is of primary importance to Sen who, inspired by its ability to secure
an objective judgment in ethics, applies it to political philosophy.

**SEN AND RAWLS ON ADAM SMITH’S WORK**

When discussing the situation of an impartial spectator, on the one hand,
Sen stresses the presence of one element characteristic of them, which is
defined as *open impartiality*. It is a procedure which is open to the adop-
tion of other, external views and which permits an objective assessment
to be made. On the other hand, Rawls, in his *A Theory of Justice*, wonders
whether Smith’s impartial spectator is truly unbiased; he is convinced that
any attempt to seek objective ethical knowledge must lead the investigator
to create an artificial, purely theoretical original position and accompanying
social contract, as is the case in his own conception. However, as Sen notes,
Rawls transforms the impartial spectator into a figure of *closed impartiality*
and ultimately identifies it with the attitude of an ideal observer, which was
not the intention of Smith. He was not concerned with creating the perfect
model or obtaining completely objective knowledge but was interested in
seeing what the situation looked like through the eyes of other people, from
the perspective of the real observers. Thus, according to Sen, the Rawlsian
interpretation of this concept is erroneous, especially since it too easily
combines the thesis formulated by Smith with the ethical views of Hume,
which introduces the idea of the impartial spectator to a particular version
of utilitarianism.

However, Sen states that this idea cannot be the basis for either classical
utilitarianism or Rawlsian contractarianism. This leads us to his own interpre-
tation of this concept, which can be called a comparative method and which
is aimed at obtaining an objective view of the situation. In his opinion, in the
case of the impartial spectator, we transcend the limits of our own life situ-
ation and, for this reason, it is of great significance for moral, political, and
legal philosophy.

Moreover, according to Sen, the adoption of the problem of justice by
Rawls is too narrow and parochial because it represents the perspective of
a certain collectivity, with pretenses to universality. This is fully evident
when the philosopher contemplates the notion of global justice, as Rawls
attempts to in *The Law of Peoples*, forcing him to make changes to his
previously adopted assumptions. The approach to the question of justice
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proposed by Sen avoids this criticism, since his procedure makes no claim to universality but is rather an investigation of a given situation. In this method, however, there is another epistemological problem that is discerned by Sen that is related to observation and prevents us from obtaining objective knowledge.

In solving this problem, Sen is inspired by the method described in Thomas Nagel’s book *The View from Nowhere*.\(^{19}\) It consists of an attempt to attain objectivity by means of a system of corrections to subjective points of view. This observation depends on the observer’s viewpoint and is of a relative nature. This is called “situational objectivity,” whereby only through the system of corrections can we approach an increasingly fuller and more objective picture, describing what is always seen from a certain perspective. The observer should be aware of the subjectivity of their situation and be open to other points of view and subsequent corrections. An example would be the observation that relatively few women in a country are successful in science, which might lead the investigator to conclude that they are not particularly suitable or talented in this regard. However, a comparison with observations made in another country, where many women are involved in scientific research, shows that perspectives from near and far should be taken into account when assessing a particular phenomenon. This is precisely the essence of the methodological attitude of “open impartiality,” which Sen finds in the concept of Adam Smith. With regard to the concept of justice that he considers, therefore, Sen formulates the following methodological condition: in order to know the idea of justice, it is necessary to overcome the situational constraints.\(^{20}\)

**SEN AND RAWLS: JUSTICE—THE BASIS FOR DEMOCRACY**

It must be remembered that justice is not understood in the sense of an ethical value but rather as a political value since Sen’s idea of justice is one that is closely linked to the democratic practice. In this system, as Sen understands it, public reasoning plays a central role. Relying on philosophers such as Walter Bagehot, John Stuart Mill, and Jonathan Dryzek, he emphasizes that there is “a connection between the idea of justice and the practice of democracy, since in contemporary political philosophy the view that democracy is best seen as ‘government by discussion’ has gained widespread support.”\(^{21}\) Thus, the conception of Sen is part of a long philosophical tradition—from Plato to Rawls—of defining justice in relation to a particular political system. By dedicating his book on justice to the memory of John Rawls, Sen repays the debt of gratitude for the inspiration he drew from the reflections of the
American thinker. It does not, however, take up the famous Rawlsian idea of deriving justice from the idea of a social contract but instead formulates its own theory of justice which is based on the concepts of Smith and which justifies the political practice of a democratic state—government through discussion.\textsuperscript{22}

The contemporary lively debate on the idea takes on a variety of forms of discursive or deliberative democracy. However, by stressing the role of public reasoning, Sen does not rely, for example, on the concept of Jürgen Habermas. It does not maintain—as is the case with the extreme deliberative positions—that public debate replaces the institutions of the democratic state. Instead, it appeals in this context to James Buchanan and to the theory of public choice, in which the mechanisms for debating and agreeing positions are reflected in the institutions of a democratic state. In such a definition of justice proposed by Sen, which is a certain procedure for an investigation in specific situations (Sen referred to it as a comparative procedure), there is, however, the danger of relativism. The empirical point of view and the comparative procedure do not determine the result and, therefore, as Sen states, we move as far as we reasonably can. However, he does not mean, as it might seem, that we can fall into total relativism but, rather, we are subject to the limitations of our reasoning. We cannot know and take into account all our views and the circumstances in our reasoning. Despite these limitations, however, common sense should act as a barrier limiting the freedom of our collective and individual decisions.

The vision presented in the work of Amartya Sen is in line with the tendency to perceive the civilizational and cultural transformations occurring in the Western world as leading to an increase in rationality on both an individual level and collectively. This process is referred to as modernization and requires the scope of freedom to be increased for progressive democratization and the tendency to settle collective conflicts by means other than by force. This process also takes place in European countries that, while differing in terms of the level of their economic development, are subject to similar social development standards as the other countries of the European Union.

The idea of social justice formulated by Sen is not only closely linked to the cultural and political sphere of the West. This is because it is not about providing specific, generally applicable principles of justice but rather is concerned with identifying a procedure that can be applied in different countries and various cultural areas. In essence, Sen simply proposes a method of inquiry into legitimate, rational collective considerations in the conditions of a particular country or community and therefore a procedure for establishing the principles of justice that, by virtue of their universal character, can be used both nationally and internationally.
Chapter 4

Rationality and Individual Freedom in the Concepts of John Rawls and Amartya Sen

The political philosophy of Rawls, like that of Sen, has an individualistic character with the individual being both free and rationally acting. If we analyze their philosophical concepts more closely, however, we can see that they do not focus on the concept of rationality as such or make any attempt to precisely define it. They are more interested in freedom, or rather on the relationship between these two categories, as it manifests itself when we consider the issue of collective or public choices. These choices are made by the individual, but their effects relate not only to themselves but also to other people, and the arena in which they appear is the broadly understood political sphere, although it can also be analyzed in economics or sociology. Both philosophers can certainly be regarded as belonging to the rationalist trend that predominates in recent political philosophy and they both take up the key challenge to liberalism of defining the nature and character of collective choices. In his works, Sen gradually moved away from the purely rational analysis of these choices, which was characteristic of social choice theory, toward the more empirical method that is used within the framework of public choice theory. Generally, however, all of these branches of liberalism adopt a concept of the individual, which presupposes freedom, that is, the ability to make choices as well as rationality, or acting in order to attain a certain good, with the latter being understood—after Aristotle—as practical rationality and reasoning.

In considering the issue of rationality, Sen does not ascribe much significance to it, claiming that discussions on rationality in politics do not tackle rationality as such but rather the notion of the good, which the political community seeks to attain. Therefore, in his books *Development as Freedom* and *Rationality and Freedom*, he primarily focuses his attention on a conception
of freedom, which in his view is more important or is primary for a given political goal.

The first of these works is a collection of lectures given by Sen to representatives of the World Bank and is of a popular scientific character, while the second is an academic work in the field of political philosophy. In the latter, the author presents the problem of choice in the framework of political theory, while in the former, he is more concerned with political practice. The same can be said of the work of Rawls, who presented a theoretical outline of his conception in *A Theory of Justice* before turning to its practical applications in *Political Liberalism*.

*A Theory of Justice* is a work that seeks to justify the two principles of social justice introduced by Rawls. The most important of them—the first principle—confers the equal right to certain fundamental freedoms upon every citizen, combining equality and freedom. Although Benjamin Constant had already distinguished between the Liberty of the Ancients (encompassing political freedoms) and the Moderns (in which emphasis is placed on personal freedoms) in the nineteenth century, Rawls maintains in his first principle that all citizens are entitled to the same set of freedoms, encompassing both of these types, to which they have a fundamental right.

In more detail, this principle requires the protection of freedom of thought and conscience, and it affords people the opportunity to participate in politics and to influence the political process (the right to vote). This means freedom of expression and assembly, the right to free associations, freedom from arbitrary arrest, as well as the rights and freedoms associated with the rule of law. Moreover, it follows from the first principle that the state guarantees this political freedom in a fair manner so that an individual’s chances of gaining a position or obtaining political influence cannot depend on their social or economic position.

The second of the principles applies to the distribution of income and wealth in a society. It states that socioeconomic inequalities are acceptable if two conditions are fulfilled: first, inequalities must be attributed to positions of authority and functions, which are open and accessible to all on the basis of equal citizenship and equality of opportunity; second, these inequalities must connect to benefitting the worst off in society, and thus they should improve their situation. Rawls declares the primacy of the first principle over the other, meaning that freedom cannot be limited at the expense of economic growth, and the only justification for the state placing certain limitations on the freedom of individuals must be based on demonstrating that it contributes to the strengthening of the general system of freedom. For example, in order to safeguard freedom of conscience, political freedom and the scope of majority rule can be limited to some extent, and thus freedom of conscience is established as a fundamental right to protect against a situation wherein the
majority could impose certain religious views on the whole of society. The idea that it is impossible to restrict political freedom under any circumstances in order to attain or secure other social values is one that is strongly argued in *A Theory of Justice*, yet it is something that is moderated in the later work of Rawls in which the idea of public reason features.\(^5\)

Rawls wishes to show that the principles of justice can count on widespread acceptance; this is why he follows the notion of the social contract, which is meant to justify his theory of justice. He thus adopts a specific conception of the person, which rests on the belief that we all have certain common attributes that are characteristic of human beings: a concept of the good and a purpose that we strive for in life, as well as the ability to create it, one that is based on reason, and with which we set or alter goals. We also have the ability to discern justice and to grasp the principles that underpin fair social relations. The fact that we are equipped with these moral powers that are common to all allows us to define ourselves as free and equal persons in moral terms and, moreover, provides the foundation for individual dignity in a democratic society. We are equal because everyone has the fundamental ability to make choices and take just actions. This theory leads to practical consequences that apply to the principles of the organization of society, since its basic structure must enable us to live in accordance with the ethical ideal of fair cooperation between free and equal persons.\(^6\)

The ideal of fair cooperation taking place in society in Rawls’ concept is something of an abstraction: we do not think about social justice in the sense of fidelity to traditional, national values, but rather as a universal principle common to all people.\(^7\) In this sense, it draws him closer to Sen, who also underscores the fundamental importance of human freedom and its primacy over the prevailing traditions or beliefs in a given country. On the other hand, Sen does not recognize some abstract definition of justice, saying that the manner in which justice is recognized has a social dimension, involving the formation of public beliefs and shaped in the course of the collective solving of problems in a given community. Rawls, on the other hand, constructs a hypothetical original position, which is equivalent to the traditional concept of the state of nature. He shows that in this situation, behind the veil of ignorance, individuals, or rather rational beings, agree to two principles of justice: equal freedom and permitting inequalities if they work in favor of the most disadvantaged groups.\(^8\)

In a social contract understood in this way, a list of primary goods is identified, which the parties concluding the social contract know are of significant importance, the most important being a sense of one’s own worth. These are also the fundamental rights and freedoms (thoughts and conscience, political freedoms, freedom of association, freedom associated with the integrity of the person, and the rule of law), opportunities and powers (e.g., choice of
profession), and income and wealth. All people, regardless of their conception of what is good and the goals that they strive to attain, need these goods and thus they must be rooted in the fundamental structure of society. Thus, Rawls, after initially adopting the libertarian concept of natural freedom, then proceeds to the liberal concept: to defining the fair distribution of goods in a society that attributes fundamental freedoms to people to an equal extent.

Rawls places natural freedom above the feudal or caste system, since it is thanks to this that people’s life prospects depend on themselves and the choices they make. However, in his opinion, the system of natural freedom in fact limits human choices, for example, the establishment of an ownership system in the original position privileges the starting point of certain people, and should therefore be complemented by the principle of equal opportunities. Thus, after making significant modifications, Rawls’ liberal freedom is placed above natural freedom because it can prevent situations where one’s origins and social situation determine the prospects of individuals.

In Rawls’ concept, by discussing the future shape of society, the parties in the original position want to secure a social basis for the individual’s dignity and respect and focus on the value of freedom because the greater the value of freedom, the more it becomes certain that they will be able to pursue their objectives; in turn, this leads them to the establishment of the two principles of justice. It can therefore be expected that these two principles will also lead us to accept a certain social minimum, the assurance of which is in the interest of a democratic society. Indeed, the fact that Rawls’ two principles of justice allow the rational determination of an acceptable minimum gives them an advantage over other concepts and makes the choice of other principles of justice (such as utilitarian or libertarian) seem irrational.

Although libertarians argue that freedom cannot be tempered or mitigated by any attempt to secure social equality, Rawls does not agree with them, claiming that we do not have to abandon the pursuit of equality in society in the name of freedom. On the contrary, the justification and defense of fundamental freedoms in his conception function by means of the treatment of individuals as free and morally equal persons.

Sen shares the Rawlsian interest in social conditions and the ability to choose, also concurring that freedom does not have to be in conflict with equality. On the other hand, like the libertarians, he stresses a conviction of the primordial or fundamental importance of freedom as a human right and forms an accusation of consequentialism against both utilitarian theories and Rawls, namely that freedom constitutes the objectives of their actions as well as its effects. Libertarians, according to Sen, are proceduralists, evaluating actions as being either legitimate or not in themselves. This approach secures freedom, but is it possible to separate the procedure from its consequences? Sen’s answer to this question is firmly in the negative and although he
observes that liberal consequentialists, geared as they are to the attainment and achievement of the objectives adopted, do not pay attention to the processes that lead to them, he does not pass completely from the liberal to the libertarian camp. However, he shares with the libertarians a conviction in the undisputed value of human freedom, the freedom that manifests itself in human lives and actions in society, and is not subject to restrictions, except those that individuals themselves establish when taking part in collective decisions.

The theory of public choice that developed over the course of the second half of the twentieth century in the field of political philosophy analyses collective choices, the decisions taken by individuals that not only relate to themselves but also to their broader communities or society as a whole. Within this trend, a distinction is sometimes made between a social choice and a public choice, a distinction related to whether this field is practiced as a mathematical, formal, and axiomatic branch of knowledge (social choice) or an area that describes empirical processes and seeks to formulate normative conclusions (public choice). In both varieties, the basic concept is choice, and the liberal assumption of the freedom of the individual, which states its ability to make decisions, is unquestionably adopted by all advocates of this trend. Sen was inspired in his early works by the founder of social choice school, Kenneth Arrow, and focused his attention on technical analyses and the construction of social welfare models. Later, however, he turned more in the direction of the theory of public choice, focusing particular attention on the issue of freedom in the broader cultural context. The approach he proposed was revolutionary for proponents of both social and public choice, where researchers typically did not define freedom on the basis of ontology or axiology but instead focused their attention on the neutral and axiologically unqualified notion of preferences.

In his article Individual Preference as the Basis of Social Choice, Sen highlights the relationship between the concept of freedom and human rights, deriving it from the philosophy of Mill, who wrote in the essay On Liberty that

the principle requires liberty of tastes and pursuits; of framing the plan of our life to suit our own character; of doing as we like, subject to such consequences as may follow: without impediment from our fellow creatures, so long as what we do does not harm them, even though they should think our conduct foolish, perverse, or wrong.

Freedom understood thus requires members of a given collective to respect the freedom of a Muslim to not eat pork as well as accepting that a non-Muslim might wish to consume it, and that these freedoms take the form of
rights in a society. For Sen, this concept can be presented in the form of a general principle—if we accept that a person living in a collective should get what he chooses, we assume that he should have freedom of choice, which is considered to be a human right in modern society. Another issue that is closely related to this concept of freedom has already been mentioned: the issue of whether these rights should be unrestricted or, conversely, whether the state or society may restrict them in certain cases. In modern liberal theories, there is a general consensus that state interference should be permitted (even libertarians allow it in certain situations), but the nature and extent of that interference is a problem that remains to be solved.

Thus, the freedom of individuals in the theory of public choice leads to the possibility of their preferences being realized in a given society and is treated as a fundamental right. Sen identifies a difference between freedom encompassed within a decisive choice and a decisive preference. In the latter, broader concept of freedom, an emphasis is placed on what an individual would choose, regardless of whether she is actually making a choice or not. Sen ascribes to a broader concept of freedom, according to which, freedom in a given question is the ability to execute a decisive preference, not necessarily on making a real choice. According to this concept, a patient can decide whether to take an antibiotic or not, even if this preferred medicine is less effective than those recommended by the doctor. Or the patient determines the surgical procedure that they have to undergo, without having any medical knowledge but relying only on convictions. These are factors that the physician should take into account because they are of a decisive nature. Sen supports a broader concept of freedom, according to which, the patient’s preferences as described in the above example should be taken into account by physicians, even if they are irrational and reduce their chances of recovery, since it is only in such a society, where the preferences of the individual are taken into account and are decisive in the making of any choice, that freedom is well protected.

In the concept of Sen, freedom is expressed in the formulation of decisive preferences, which should be taken into account irrespective of their content, context, or situation. They are not related to some kind of artificial situation or to human beings in isolation but rather to an individual living in society. Here the main criterion for measuring quality of life is the ability to function, a hallmark of freedom. It is expressed by the possession of decisive preferences in view of how they are to operate in a given collective. According to Sen, from the point of view of freedom, this ability to function is more important than attaining a self-welfare goal.

This is illustrated by the following example: in a particular society, a rich oil tycoon decides upon everything and creates a good living environment for the inhabitants of the country in terms of access to education and free
health care. People are successful, they have the requisite conditions needed to achieve their life goals, but they lack a functional capacity since they do not owe their high standard of living to themselves but to their benefactor. Sen, therefore, emphasizes the value and significance of such a freedom, irrespective of the conditions in which man exists, because human freedom must be independent of the situational context, and thus of the grace of another. Against this concept of freedom, one might choose to raise the objection, as G.A. Cohen has done, that its author adopts an “athletic” vision of man. Responding to this charge, Sen emphasizes that the concept of freedom that he advances provides the individual with a kind of moral authority over what happens to them in life, an authority that is independent of how their preferences and choices come into being, and also whether or not they are in accordance with the grace of people in positions of power.

In this understanding of freedom, individuals living in a democratic state can force the government to respect their preferences through electoral pressure, their involvement in various associations, and through having an impact on legislation. A society that provides its citizens with a high degree of this functional ability provides them with “passive power,” the ability to exert pressure on the government.

As discussed earlier, theorists of both public and social choice tend to equate freedom of choice with preferences in order to avoid becoming entangled in any reflection on values. Sen, however, also undertakes the problem of values; he focuses on freedom as a human right and a fundamental value, and also considers the notion of preference as freedom, in which the aspect of choice is essential. In this approach, freedom can be determined by calculating the options that a person can choose by specifying the number of alternatives available. Thus, for example, we can compare the set of alternatives offered to a person: with set A (to be hanged, shot, burned alive) and set B (to receive a reward, a beautiful house, a luxury car); it seems obvious at first glance to choose B, as they give the individual greater satisfaction. However, this is not a correct conclusion, since one can easily imagine that someone might choose set A, believing that it would pave their way to heaven.

From the above analyses, the conclusion is that the preference should not be regarded as a simple psychological act of selection, which is presented in the form of the formula: “X is more preferable than Y.” Sen ultimately appeals to Arrow who, when characterizing preferences in his work Social Choice and Individual Values (1951), considered them to be part of a person’s system of values, including value-based evaluations (i.e., meta-preferences).

Arrow launched a direction of research, which delineated and defined individual values/preferences, treating them as the foundation of social choice. Although decisions in a society often rely on other types of information, for
example, on historically established rules, customs, and traditions, Arrow’s method called for attention to be focused on individual preferences and making them the starting point for any definition of collective choices. The creator of social choice theory referred to the reflections of the Enlightenment mathematicians (Condorcet, Borda), who sought a formal, mathematical description of a procedure for the combination of preferences and the formulation of collective decisions, which would lead to social consensus. In the process, they made a number of interesting discoveries, such as the paradox, formulated by Condorcet and then taken up by Arrow, in which the line of reasoning that consisted of merging individual preferences into a collective choice leads to the conclusion that sometimes we are unable to reach a decision by using the majority rule.21 Describing Arrow’s concept, Sen draws attention to what is, in his opinion, the overextended, analytical aspect of the theory of social choice. It is based on axioms and deductions that expose it to justified criticism from theorists of the school of public choice, who argue that the essence is lost through excessive formalization, and with it, the actual subject of research.22

Although Sen took up the issues explored by Arrow in his early works and remained influenced by his work, he later departed from the main trend of social choice, recognizing the superiority of an empirical approach that favored the school of public choice. He also formulated several objections related to the understanding of preferences in the theory of social choice. In his opinion, the preferences of individuals analyzed in this regard appear to be devoid of significance and can be interpreted as satisfaction, desire, or value. They contain too little information about individual privileges and abilities, and are also unjustifiably treated as given, while experience has taught us of the potential to shape them within the context of a social debate. It is also worth noting that social choice overlooks the fact that the decisions taken can themselves be more important than the preferences associated with the consequences of the decision. The accusation of reductionism can also be added to the complaints made by Sen against the methodology of social choice; preferences in this concept are isolated, taken out of the context of values and beliefs in which they mean something, in order to turn them into a collective choice that alters their meaning.23

In considering the above allegations, it can be concluded that they stem from the particular form that the modern economy has taken, one that, according to Sen, is characterized by excessive formalism and rationalism. The traditional economics of well-being tends to regard the state of things as a function of individual utility and this, combined with consequentialism, leads to the assessment of all social decisions, concerning the activities of both individuals and institutions, being made in terms of the value of their utility.
To escape from the trap of an excessively formalized theory of social choice, Sen proposes the incorporation of some elements of the concept of Rawls into his theory, accepting the possibility of interpersonal comparisons of preferences, even though the list of primary goods in his concept is determined on the basis of a certain procedure. Moreover, in view of the accusation that preferences in the theory of social choice are incorrectly treated as given, Sen suggests following the work of Habermas, in which the German philosopher stressed the necessity of conducting social debate in order to determine and define preferences. Thus, Sen ultimately concludes that the theory of social choice should abandon its analytical methodology in favor of accommodating a role for social dialogue between people and public debate in any description of preferences.

According to Sen, however, the most important feature of this theory is the consequentialism that constitutes its main philosophical foundation. This position states that individual preferences may be defined and then combined under given social conditions, and that collective political decisions are judged on the basis of the results they bring and on the situation that they lead to. This emphasis on consequences is fiercely attacked by philosophers who believe that the emphasis of the ongoing reflections should be shifted from the social conditions to the processes themselves.

This procedural aspect is primarily discernible in the libertarian political philosophy of Nozick, on the basis of which the rights of individuals are formed, including freedom above all. These rights, which are treated in a purely instrumental manner in utilitarianism in terms of their ability to generate utility, are separate from their consequences in the concept of Nozick, and the emphasis is shifted onto their implementation, regardless of where these actions lead. An example of this would be the view put forward by some representatives of radical libertarianism that, in the name of the freedom of the individual and the rights they possess, a country should legalize all drugs, since man alone decides his own fate. Nozick, however, does not belong to the group of ideologists proclaiming such extreme views; even though he underlines the independence of rights from their consequences, he simultaneously reflects on what should be done if the implementation of these rights brings about effects that are hard to accept, such as “moral horrors.” According to Sen, the most difficult problem and the strongest argument against this philosophy is the fact that in some countries where a libertarian system of rights prevails, the phenomenon of famine often occurs, which for obvious reasons cannot be accepted. Similarly, Nozick also permits a departure from the principle of independence of rights from their consequences in such exceptional cases, arguing that in situations where the exercise of certain rights would lead to devastating consequences, it is necessary for the state to limit those freedoms. For example, for him,
the fact that an individual does not want to live near centers with a large black population and moves to another area of the city does not constitute a threat or danger; however, when this attitude becomes widespread and takes the form of racial discrimination, anti-discrimination laws should be implemented.25

Sen accepts this type of libertarian argumentation but does not agree with the libertarians’ view of the innate or absolute character of the natural powers of the individual.

Certainly, laws can exist in society regardless of whether they are accepted, and procedures can be described as good or bad regardless of what people think about them. In his opinion, appealing to the idea of natural rights, treated as “given” and not as “political,” poses a threat to the freedom of the individual. He himself advocates the political notion of rights, the concept of which is derived from the Enlightenment tradition and features aspects of the theory of both social and public choice.

The position of Sen is an attempt to construct a bridge between the theories of social and public choice; he therefore maintains that the social choice theory should take empirical assumptions into account and—as is the case in the theory of public choice—focus more attention on the utility and applicability of this research. Above all, it is worth noting that he postulates in his later work the need to incorporate the individual’s value system into any analysis of their choices and interpret them in a wider cultural context. The sphere of values adhered to by the individual is the justification for their choices, and the individual’s freedom becomes the basic value to be realized in the political sphere. Despite his libertarian emphasis on individual freedom, Sen does not deny his links to Rawlsian liberalism. Both of these concepts of political philosophy share the belief, also common to both Rawls and Sen, that the conditions that should be guaranteed by a just society are not economic but are instead political. Certainly, material goods are important, but the political structure of a liberal-democratic state—one that guarantees freedom for individuals—takes priority.

The difference between the concepts of Rawls and Sen lies in the fact that Rawls creates a rationally structured state that has some of the typical features of social democracy, as his libertarian critics have been pointed out, while Sen prefers a liberal democracy, one which above all ascribes to individuals their own understanding of freedom as the freedom to choose. This choice is not determined from above, as it is with Rawls, nor does it force people to acknowledge a certain rational structure. Individuals in the conception of Sen are understood as empirical beings who are able to make independent decisions without predetermined and enforced solutions. He also believes that the economy is better when people are free; thus, it is the duty of a democratic
state to ensure that citizens are provided with both freedom (the ability to choose) and education (to perform choices rationally). In the liberal conception of Rawls, however, the main task of the well-organized state is to implement the prescribed and predetermined principles of justice, which should be manifested in all its institutions.
Chapter 5
The Idea of Justice and the Problem of Aid
Amartya Sen and Muhammad Yunus

Issues of solidarity and social justice, as well as the related questions of providing aid to those individuals or groups in the most need in society, had not previously attracted much attention from the theorists of classical liberalism and libertarianism, who tended to relegate them to the margins of their consideration. In these traditions, from Locke to Nozick, the focus tended to be upon the personal nature of aid—regarded as a type of philanthropy—and the relationships between individual people, rather than a dependence between individuals and the given institution of the state. The justification for this kind of action in the conception of Locke was situations in which certain people were unable to survive and there was thus a natural obligation of hospitality to aid them. By contrast, in the libertarian conception of Nozick, the government was allowed to constrain the freedom of individuals to perform actions in order to avoid a catastrophic horror, for example, a situation of extreme poverty in a society as a phenomenon that needed to be accepted from a moral perspective.

Contemporary liberalism does not remain aloof when faced with human misery and attempts to tackle this issue within the broader framework of social justice, an idea that was already presented in the writings of the philosophers from the circle of German Ordoliberalism in the first part of the twentieth century. Thanks to Rawls, this became the core idea of modern liberalism, before being developed further in the works of Sen and Nussbaum.

In his works, Sen attempted to tackle the issue in both its theoretical and practical dimensions; he considered the problem of the social function of prosperity, and he also explored the phenomenon of famine. If we attempt to reconstruct his views on the subject of aid, there is no sense in scouring his works for an answer to the question whether it is necessary to help the poorest in society or those with physical or social disadvantages since, for
the continuator of the political philosophy of Rawls, the answer was both obvious and unquestionable. One could rather pose the following question: *Whom* should we try to help *and how*? This was precisely what Sen sought to answer in his works, from *Poverty and Famines* up until his last magnificent work, *The Idea of Justice*, as well as in many of his articles, press interviews, and publications.

In the pages of his works, Sen frequently analyzes the problems of poverty and human need as theoretical issues, together with how best to address them. He provides definitions of famine and poverty, which show how they deprive man of his dignity and limit his freedom, so as to formulate a normative program of aid for those in need. Within this, some actions are regarded as justified and recommended while others are criticized and rejected as bringing more harm than good. One of the best examples of the practical implementation or adoption of this program would be the actions of Muhammad Yunus and the Grameen Bank in Bangladesh that he founded, both of which are praised by Sen in his work. For his practical actions and theoretical work on the conception of microcredit, Yunus was awarded the Nobel Peace Prize in 2006. In fact, both Sen and Yunus are Nobel Prize winners and both come from the same former province of India, Bengal—part of which is now in Bangladesh. One might venture the thesis that the theoretical vision of Sen concerning aid found its perfect reflection in the work of Yunus, who became one of the chief advocates of this theory.

As a philosopher, Sen is a continuator of the political theory of Rawls, although his economic views should be ascribed to Arrow’s theory of social choice. The latter, in considering the problem of economic inequality in a democratic state, showed the impossibility of constructing a social welfare function. In his own research, Sen confirmed that the route indicated by Arrow would not lead to the desired goal being attained but one could approach the matter in a different manner. One could take his methodological foundation, particularly that of the individualism that was characteristic of both social and public choice. This proclaims that the value systems and preferences of individuals should be taken into account in the construction of economic policy programs and means that, according to Sen, all economic programs and decisions focused on the implementation of social welfare must be assessed from the point of view of individuals and take into account how they affect their life situation. This is an extremely difficult task, because in this approach, quantitative welfare measures, such as GDP, national income, or national income per head, are, according to Sen, unreliable and should be replaced by qualitative criteria. This difficulty is magnified by the fact that the basic criterion for determining what constitutes a good life in the concept of Sen is not only economic but also political—it is the freedom of the
individual that is realized in society, its scope, and the practical forms that it takes.

The emphasis on human freedom, and its fundamental character as the basic value that determines the good life, was taken from Rawls’ political philosophy and from the work of the founder of the school of public choice, Buchanan, to whom Sen also refers. However, all of these influences were transformed by Sen in an original way, since he places the problem of the freedom of the individual against a broader philosophical background, referring to the Enlightenment theories of progress, and above all to the Marquis de Condorcet, in order to claim that the expansion of the area of freedom has proceeded hand in hand with the political, social, and economic development of humanity. It is against this background that programs for increasing welfare and consequently eliminating poverty and deprivation in society should be assessed. Sen, however, is no utopian; he does not believe in the implementation of a perfect social structure or a state in which, thanks to an ideal strategy, poverty would be eliminated once and for all. On the contrary, he thinks that even very rich contemporary societies struggle to deal with this problem, and the strategy he recommends when constructing assistance programs is to take into account the specific situation of a given country together with the living conditions of its inhabitants.

POVERTY, DEPRIVATION, FAMINE

One of the popular forms of explanation utilized by Sen in order to present the problems he analyzes is that of an illustrative story—a Tale of Two Peoples: as the story goes, there is a country that is home to many poor people and subsequently experiences very rapid economic growth, but only half the country benefits from this newfound prosperity. This privileged group in society spends much of its newfound wealth on food and, if supply does not grow in line with demand, there is an associated rise in prices. The rest of the population is unable to buy food and begins to starve. This example is not completely fictional and has its origins in the Bengali reality of 1943—as part of India, Bengal was then under the control of the British. The British, even though they tried to counteract the rise in prices, were unable to solve this problem and, as a result, two to three million people starved to death.

This example illustrates two theses: first, economic growth on a national or global scale may lead to a sharp increase in food prices and have a negative impact on the fate of people whose incomes do not increase; second, economic growth in a given state does not automatically lead to the improvement of the living conditions of particular individuals.
This second thesis is frequently used by Sen as an argument against measuring the standard of living or the level of deprivation only in quantitative terms, such as increasing national income or gross domestic product (GDP). Instead, he proposes his own definition and method for measuring deprivation. Famine, which in his opinion should be distinguished from malnutrition or deprivation, is a sudden drop in the food available per capita. The measure of poverty, however, cannot only be income per capita, since while it permits us to establish what percentage of the population lives below the poverty line, it does not give us a full picture of the distribution of poverty, in other words, how close a given person finds themselves to that line. A more precise measurement of poverty is known as the Sen index, which incorporates three elements: income per head, the poverty gap, and the distribution of income between the poorest people.

For Sen, famine is something that cannot be tolerated in the modern world. If it has occurred as a result of some kind of natural disaster, immediate aid is probably needed, but from the long-term perspective, the proper tools are political and institutional solutions and, above all, the spread of democracy to counteract this phenomenon. It seems unlikely that a democratic government would let famine occur, with the prospect of losing a future election as a result. In this respect, Sen compares the examples of two very populous countries, India and China. In the latter, the communist government permitted famines to break out in the postwar period, something that democratic India did not.

When we turn to deprivation, however, more diverse aid programs are required and, in order to assess their effectiveness, we must first establish what deprivation rests upon. In his latest works, Sen attempts to tackle this problem not in quantitative terms but in qualitative: the indicator and measure of poverty is not reduced income but rather the reduction in human capabilities and their potential functioning. Aid programs typically incorrectly focus on income inequality while overlooking other disadvantages like unemployment, poor health, lack of education, and social exclusion. Aid programs may thus not rely solely on increasing income but must also take into account other factors such as life expectancy, gender inequality and health, after all, as Sen claims, a poorly construed theory can kill.

The scholar, in his works on the borderline between social philosophy and economics, places the problem of poverty in a broader and more general context of the theory of development in the pages of his books and numerous articles. Development in his conception is not only an economic notion but also has a broader significance. Certainly, economic development was traditionally defined in terms of economic growth, and in a popular view, a healthy economy experiences strong growth. However, in Sen’s concept, development is defined by freedom, allowing a healthy economy to be
defined as one that leads to the genuine expansion of human capabilities. Attention is shifted here to people and the effects that social and economic changes bring to their lives, with the tool to measure this being the capabilities of individuals and their potential to choose.

This emphasis on capabilities and the life opportunities of individuals characterizes Sen’s conception of development, which is focused on man. This approach is in contrast to utilitarianism, in which the acting person is a maximizer of individual utility (homo oeconomicus). In Sen’s approach, people are the subjects of their actions and at the same time, they are evaluators who operate in accordance with external criteria and/or their own well-being.

Certain factors such as sympathy and commitment are combined with utility. In general, however, individuals in the concept of Sen are perceived, on the one hand, as persons focused on their own interests, but on the other hand, as actors who increase or inhibit progress. They can take measures to reduce their own poverty or create the means to cope with the poverty of a given society and deprivation.

There thus exists a dependency between freedom and development since, according to Sen, economic growth is correlated with the progress of human freedom, which is also linked to increased rationality in society and greater access to information. In his works on *Rationality and Freedom* and *Rational Fools*, Sen emphasizes that a narrow, economic conception of rationality is false, since at its heart is the maximization of one’s own interest at the expense of cooperation between individuals. One can imagine a world governed by perfect competition, but it would be free from morality; in such a world, the reorganization of the economy to improve a situation of particular groups of people would not be possible. In a world where everyone is rational and focused on themselves, and all changes are mutually beneficial, one cannot correct a given situation without worsening the position of another person (Pareto); thus, morality is unnecessary. In the real world, however, we are confronted by inequalities and situations that require the employment of ethical rules, and above all the appeal to the most general value—the idea of social justice.

**DEVELOPMENT, FREEDOM, JUSTICE**

In Sen’s understanding, distributive justice may be defined through the goods that we should offer to others, and the concept itself is pluralistic since there are many theories defining the principles of just division. Justice in relation to the production of goods should be determined in such a way as to provide everyone with an adequate number of benefits, but in this context, the following question arises: Which division of goods would we consider to be
Chapter 5

impartial? Which theory of justice is the right one in a given situation? Sen provides the example of three children to whom we are to give a flute to illustrate this case. Utilitarianism supports the award of the instrument to Anne, who is able to play the flute. In contrast, egalitarianism argues that we should give it to Bob, the poorest of the three. Finally, libertarianism would claim that Carla, who made the flute, should be the one to receive it. As a result of this story, we can see that different ethical conceptions lead to variable political solutions. There is no universal principle of justice in every society, which would allow us to choose in a democratic manner an impartial criterion that would be regarded as correct. In this particular case, one would tend to give weight to the utilitarian view because Anne is the only one who can play. 14

Reflecting upon this, Sen believes that we should establish the growth of freedom and human capabilities as the main objective of society. This objective seems to be more justified than the primary goods of Rawls or the utilitarian measure of utility. Developing this idea, Nussbaum formulates a list of the central human capabilities, one of which—the most basic one—is life and being able to live it to its fullest length. 15

In a manner akin to Aristotle, Sen believes that human actions are geared toward the achievement of a certain good. A necessary condition of the realization of this objective, however, is not utility, as utilitarians believe, or primary goods, as Rawls maintains, but “that of the substantive freedoms—the capabilities—to choose a life one has reason to value.” 16 If we want to take into account the life possibilities of individuals and their capabilities to attain goals, the primary goods in their possession are less significant and all of the factors that determine the use of these goods to create these possibilities are more important. For example, an older person who is sick or disabled may possess more goods but, despite this situation, has little chance of leading a normal life. A crucial consideration is thus functioning, which represents the different things that we wish to do and who we want to be. “The valued functionings may vary from elementary ones, such as being adequately nourished and being free from avoidable disease, to very complex activities or personal states, such as being able to take part in the life of the community and having self-respect.” 17

By stressing the mutual relationship between capabilities and functioning, Sen subordinates these functionings to a more general category of freedom. “A person’s ‘capability’ refers to the alternative combinations of functionings that are feasible for her to achieve. Capability is thus a kind of freedom: the substantive freedom to achieve alternative functioning combinations (or, less formally put, the freedom to achieve various lifestyles).” 18 However, he stresses the difference between the choice between available opportunities and choice that an individual may have to make. For example, a wealthy person on a diet and a poor person do not differ in function, but they have different
sets of opportunities because only the wealthy person can eat as much as he or she desires. The implemented functions must be distinguished from the possibilities: “Fasting is not the same thing as being forced to starve.”19 Although the act of choosing can be regarded as a valuable functioning, it is only when real and valuable alternative opportunities exist. Thus, Sen concludes that individual functionings better serve the purpose of interpersonal comparison than comparison of utilities and that capability approach is more useful for evaluation and assessment of the quality of life.20

In his critique of the capability approach as represented by Sen and Nussbaum, Thomas Pogge emphasizes that this notion takes on its full significance when it is considered within the framework of the theory of justice that the two thinkers advocate.21 Sen also emphasizes this relationship, since he declares in his theory of justice that the basic criterion for assessing the individual advantage of individuals is freedom expressed in the form of capabilities. “In this perspective, poverty must be seen as the deprivation of basic capabilities rather than merely as lowness of incomes, which is the standard criterion of identification of poverty.”22 Income deprivation often goes hand in hand with reduced opportunities for an individual, but this is not always the case. Also of significance are access to education, health services and ownership reform. In Sen’s opinion, governmental programs have tended to focus too much on increasing the incomes of their citizens at the expense of education and health provision. He recommends another strategy, confirmed by the example of the Indian state of Kerala, where investment in education and health provision was accompanied by reduced poverty when the state experienced dynamic economic growth.23

The most important value in the political philosophy of Sen—individual freedom—is defined by him as a form of capability for a person to do what they want to do and have reason to value,24 and thus it has a functional character. He claims that the ways of functioning are constitutive of a person’s existence and encompass different situations: from elementary states, like being sufficiently nourished, in good health, avoiding untimely death, to more complicated states, such as being happy, nurturing self-respect, and participating in the life of a community. This concept of freedom, however, is not a type of functionalism, because the individual’s well-being is not just about the current state and action, and how it functions at the given moment, but also about having real opportunities and possibilities of functioning that are alternative to the current situation. By using the term “capabilities,”25 Sen believes that the main social objectives, such as justice and development, should be described in terms of human functional capabilities. In other words, opportunities exist for people to take actions that they want to and that they can be whom they want to be. Thus, these actions, states of existence and the freedom to adopt them constitute the value of human life.
In Sen’s view, the difference between functioning and capabilities rests on the distinction between what is currently being done and what is effectively possible. In other words, the distinction between what is achieved and the available options from which one can choose. An example of different types of functioning would be activities such as working, resting, being healthy, being educated, and being a member of society. People with functional abilities have real freedom and can live the way they want. If they have real opportunities and possibilities, they can choose the option they prefer.

It is worth mentioning Sen’s own concept of freedom at this point, one that manifests itself in the actions of individuals and is measured in terms of access to the opportunity to choose. If we compare this conception with the idea of freedom present in existentialism, which ascribes full and unrestricted freedom of choice to man, it is clear that Sen has something very different in mind. He does not mean the freedom to choose as possessed by Kader Mia, the Muslim laborer who was murdered by Hindus during the Indian Civil War of the 1940s, since he had to go to an area in which they predominated while seeking employment. The worker had the choice to die of hunger, together with his family, or to look for work in a dangerous region where his life would be at risk. In the opinion of Sen, these types of opportunities are not effective because they do not lead to an improvement in the real fate of people. True and effective freedom exists when we are able to choose between an inactive, hungry existence and taking up employment and improving our lives. If the family of Kader Mia had really had any other chance of surviving, he would not have had to risk his life during a time of upheaval to look for work in an unsafe area. The given case is thus not one that provides an example of freedom of choice, but rather illustrates its absence, where economic slavery forces individuals to act in nonbeneficial ways, sometimes even leading them to lose their lives. This situation has now become emblematic, since the fate of this worker has been shared in recent years by many thousands of migrants from Africa, escaping from famine and war in their own countries to reach Europe, risking a dangerous crossing of the Mediterranean during which many lose their lives.

THE NATURE AND TYPES OF SOCIAL AID

Another issue that arises in connection with the nature of social welfare is the problem of social priorities. In his work, Sen does not undermine the importance of economic growth in a given country to improve the standard of living of its citizens but stresses that it is not a prerequisite.

The quality of life can be vastly raised, despite low incomes, through an adequate program of social services. The fact that education and healthcare are also
productive in raising economic growth adds to the argument for putting major emphasis on these social arrangements in poor economies, without having to wait for “getting rich” first.27

The optimal solution for the construction of a government’s social policy would be to ensure the combination of the following two factors: economic growth and improving the quality of life of individuals, while ensuring that both processes mutually aid one another. Sen believes that mortality can be reduced by aiding access to health services to individuals and improving their quality of life, without any radical growth in income per head, thanks to social aid programs. A common charge leveled against this view is the question of where should the money be found to do so if not by means of economic growth? In poor countries, however, social aid and its results, such as improved health or education, are less costly than in rich countries. It is thus often a question of a lack of political will since, where it exists, the country’s poor financial condition loses its importance.

In this respect, Sen refers to the research he conducted with Jean Drèze, which led to the book *India: Economic Development and Social Opportunity* (1995). In this work, on the basis of India, they demonstrated that aiding pro-market policies should be accompanied by the intense development of social infrastructure (broadening access to health services and elementary education). However, it is difficult to say to what extent these recommendations are being implemented today in a reforming India, which is becoming a global economic powerhouse.28

While considering the problem of how to create a good political theory, which would facilitate an answer to the question of whom to help and how, Sen supplies another story, the hero of which is a woman called Annapurna. She wants to hire one person from among three unemployed people to work in her garden and she wishes to make a just choice. Of the three, Dinu is the poorest, Bishanno recently fell into poverty and suffers from depression, and Rogini is sick, and the money would help to pay for her treatment and would help to improve her living conditions.29 While the egalitarian would reply that the first person is the most deserving, and the utilitarian would favor the second, Sen chooses the third since the goal of aid is to improve the quality of life of individuals and provide them with the opportunity to improve their fate. In light of this tale, it is clear that the best practical example of Sen’s theory of social aid is to be found in the activity of Muhammed Yunus, a professor of economics and the founder of Grameen Bank.

The idea was born in the mid-1970s when Yunus was conducting a project to improve the living conditions of villagers. Together with a group of students, he found himself in the village of Jobra in 1976, where the women made bamboo tables and made two cents per day; they were unable to buy material for twenty cents and thus had to borrow money from the buyer, who
dictated the terms of the transaction. Instead, Yunus lent them the money himself, forming the inspiration for the creation of the Grameen Bank, which gave the inhabitants of Bangladesh small, low-interest loans to set up their own enterprises, without the need for any of the security or guarantees that larger financial institutions required. The clients were mainly women (90 percent) who borrowed small sums, repaying almost 98 percent of the sums loaned. Group loans were also possible, in which the participants vouched for one another.30

Yunus’s success inspired other countries to open similar banks, although not always with the same goal of aiding people, as was the case with Grameen Bank, but were instead motivated by profit. In the opinion of Yunus, therefore, they had no right to use the term “microcredit,” which had been so valued by the Nobel Prize Committee who, when awarding him the prize, claimed, “Lasting peace cannot be achieved unless large population groups find ways in which to break out of poverty.”31

At the beginning of 2011, Yunus was removed from his position as the director of Grameen Bank, with the reason cited being that the bank had changed its character and was now making loans to young people to buy consumer goods and that the bank’s activity was not contributing to the development of the country and the elimination of poverty. During a speech in London in May 2011,32 Yunus responded to these charges and explained that he believed in the potential for young people to change existing structures but believed that they needed material help in order to do so. In response to the second charge from his critics, namely the question as to why poverty was still widespread in Bangladesh despite the tremendous success of microcredit, the founder of the bank for the poor supplied some hard facts and figures. In his opinion, since the launch of the Grameen Bank in 1979, the percentage of people living below the poverty line in Bangladesh had fallen from 85 percent to 32 percent. Even if these figures are not entirely trustworthy, it is a widespread opinion that the number of people living in abject poverty has fallen considerably in recent years. Yunus does not claim that this was solely as a result of microcredit but believes that it was never the objective of Grameen Bank to completely eliminate poverty but rather to help in this endeavor. In his speech, he also appealed to the work of Sen, which concerned the relative level of social development in India, China, and Bangladesh in recent years. This shows that even though the GDP of Bangladesh is only half that of India, all social indicators of the quality of life in Bangladesh are slightly better than those in India. For example, life expectancy in Bangladesh is 66.9 years while in India, this figure is 64.4; the child malnutrition index in the former is 41.3 percent while in the later, it is 43.5 percent; the average length of education in Bangladesh is 4.8 years and in India, this figure is 4.4 years.
Sen explains these differences as stemming from the considerable investment in the social sector in Bangladesh, the activities of NGO’s and civil associations, the actions of the Grameen Bank, and certain governmental programs. In the opinion of Yunus, therefore, even though microcredit did not bring about the complete elimination of poverty, it is far from true that it did not help Bangladeshis.

The argumentation utilized by Yunus rests on philosophical foundations related to the notion of freedom, which are taken from Sen and which claim that the essence and goal of development is the freedom of individuals. The individual in Sen’s conception becomes a subject in the processes of development and aid, rather than solely the object of such processes while institutions such as the state or society can serve to strengthen people’s opportunities. Government should not be treated merely as the supplier of finished products, in this case—prosperity,33

The development of individuals, the elimination of poverty, and the opportunity to enjoy goods are realized not only thanks to the efforts of people themselves but also thanks to the institutions that they have brought to life. It must be remembered that the institutions in which we live and function are based on one of many possible impartial judgments considered in political philosophy under the umbrella term of a theory of justice. The theory of social justice that the collective body chooses to implement defines the framework in which their individual citizens are able to act. Therefore, a democratic society can effectively determine the forms and programs that improve the life opportunities of individuals, and their character and effects must be subjected to a debate that engages all parties.

SOCIAL ENTERPRISE

In his book Building Social Business, Yunus describes an institution of his own creation, which he terms a social enterprise. He places this against a broader background, the reform of capitalism, which he regards as necessary. To date, capitalism has rested on two foundations: on the conception of man as homo oeconmicus and the maximization of profit by economic entities. Both of these foundations are faulty since it is the adherence to their economic principles that has led to the current crisis.

The social enterprise is a new, previously unknown institution. It differs from other forms of social venture and cannot be reduced to the already existing activities of an economy that is sensitive to the needs of society and that adheres to the widespread notion of corporate social responsibility (CSR), which often amounts to the traditional practice of philanthropy.
Yunus questions the model of capitalism that we have used to date, one in which the basis of social prosperity are companies focused on profit and its maximization; companies which during times of prosperity, and for marketing reasons, allocate a proportion of their profits to reduce poverty or to fund nonmarket areas such as culture or education. These actions, whether taken for ethical or marketing purposes and having the goal of improving the image of the company as a responsible societal actor, are nothing more than traditional philanthropy in the view of Yunus; these companies allocate certain sums, sometimes large sums, to help those in need, but this activity ceases in periods of crisis since profit has greater weight than ethical concerns.

A social enterprise is a very different organization, one in which social objectives have priority over profit and which in practice means that their owners and shareholders do not receive dividends from the capital they invest. This enterprise should finance itself and all profits are allocated for its further development and investments. Yunus, like the nineteenth-century socialists, believes in the need to transform capitalism but, unlike them, he does not reject private property; on the contrary, he believes that it must remain the foundation of the capitalist economy. Social enterprises have owners who may choose to withdraw their investment at any point, although without any profit. Such an approach to ownership means that, despite the apparent convergence with socialist ideas, Yunus does not sympathize with any of the existing forms of socialism and collective ownership, whether in the form of state control or as a cooperative. He merely wishes to reform capitalism and believes this process should be made with small steps through the adoption of new, nonprofit-oriented business institutions, ones that may initially coexist with the current capitalist economic institutions and may perhaps eventually become the dominant form.34

Yunus is thus neither a socialist nor a utopian thinker, since he does not require radical changes to be made to the current free-market economy in order to create a perfect future society that is very different from our own. Instead, he takes up the position of a liberal reformer who believes in human nature and at the same time looks for factors that might bring about change.

Moreover, unlike Sen, who considers the problems of poverty and deprivation to occur on the basis of economic and political theories and attempts to solve them, Yunus is first and foremost a practitioner who introduces his innovative assistance programs into real life and has constructed a specific theory on this basis. This was the case with microcredit, when from the idea of providing small loans for small producers to purchase material, he proceeded to establish a banking institution that specializes in doing so and
then moved onto formulate the theory of microcredit. In turn, when he came up with the idea of creating a factory producing cheap yoghurts for malnourished children, together with Danone, it led to the creation of his theory of a social enterprise. Such an enterprise can take one of two forms: the first is represented by Grameen Bank and is one in which the attainment of social goals does not exclude the prospect of its co-owners and shareholders making a profit, while the second, in the opinion of Yunus, is more ethically perfect and takes the form of a company that does not generate profits for owners. The aim is not only to diminish existing inequalities but also to eliminate poverty on a global scale, something that Yunus believes can be done under a reformed and modified form of capitalism.

Sen is an economist and philosopher, and Yunus is an economist in practice, yet they share a faith in the presence in the world of a process of development, which increases human freedom (Sen) and eliminates poverty (Yunus). They are also united in the belief that this process takes place thanks to human capabilities and creative activities. The institutional, political, and economic system should, in their opinion, permit and aid the enterprise of individuals, enabling them to lift themselves out of poverty. Yunus emphasises that people are not poor as a result of the workings of fate but rather for social and sometimes cultural reasons, and individuals should live in conditions that enable them to live a dignified life and fulfill their dreams.

They also both think that people are not radically different from one another, and the differences that we discern are mostly the result of the influence of cultures and religions; if, however, certain cultural or national characteristics interfere with the development of human freedom and entrepreneurship, they should be changed. It can be said that the success of the Grameen Bank and other similar initiatives was based on exploiting the untapped potential production capacity and entrepreneurship of women in Bangladesh. Yunus was able to activate this group professionally and thus contributed to improving the situation of the whole community. This did not require radical actions, or political, economic, or cultural revolutions; it is instead possible to change the cultural constraints that hinder human freedom and initiative by means of argumentation, persuasion, and showing the economic benefits for individuals that flow from these changes.

Both Yunus and Sen share certain assumptions about the universality of human nature and the creative possibilities and creativity that are inherent in man. There are no differences in this regard between Europeans and Asians, between people of the East and the West, and existing cultural differences are often exaggerated for political purposes, which can lead to conflicts and wars. Sen addresses this problem in his book *Identity and Violence* (2006), where he advances a cosmopolitan position and belief in the possibility of humanity attaining peaceful development. This vision of a world without wars and
deprivation, one in which people will use their freedom to make rational and ethical decisions stems from the philosophers of the Enlightenment, specifically from the ideas of Condorcet, and also from Kant and Smith. In the work of Sen and Yunus, the theory of progress, combined with the idea of social justice, finds its contemporary reflection.
Chapter 6

The Theory of Social Justice

Amartya Sen and Martha Nussbaum

The theories of justice created by Sen and Nussbaum are linked by the fact that both of them are of the “Rawlsian” school and that they both make reference to his work but regard it as a point of departure in order to present their own conceptions. They both acknowledge the influence that the Rawlsian concept of distributive justice had on them, but they both reject his methodology and the theoretical conclusions that it leads to. The inspiration in question revolves around the fact that both thinkers joined in advancing the debate on social inequality, which had been initiated by the American philosopher. Sen did it directly in the late 1970s, before formulating his definitive version with the publication of The Idea of Justice, while Nussbaum took her inspiration from both of these scholars, presenting her conception in the work Frontiers of Justice.

Both Sen and Nussbaum reject the rationalistic methodology and constructivist views of Rawls. From the position of liberal individualism and empiricism, Sen questions the achievements of Rawls’ philosophy since his theory of justice does not account for the diversity of people and creates a model that works on a reductionist notion of the individual. Nussbaum proceeds in a similar manner, questioning Rawls’ theory from an empirical perspective and claiming that it needs to be rejected since it does not encompass certain social groups and entities that should be considered by any theory of justice: the mentally and physically disabled, as well as animals. Thus, both utilize a methodology that is very different to that of Rawls in their theories: one based around a capability approach, opening up new research directions that have found their continuators all over the world, of which, the work of Elizabeth Anderson deserves particular attention. These continuators have been criticized by Thomas Pogge, who believes that their theories do not resolve the tremendous problem of social inequality either, nor do they propose a viable alternative to the distributive justice of Rawls.¹
Pogge’s line of argumentation is not a valid one, however. First, Nussbaum and Sen both continue the fundamental idea of Rawlsian liberalism since they agree that the problem of inequality can only be resolved by means of distributive justice. Second, recognizing the weaknesses of this theory, above all its abstract character, they put forward their own theories that remain utilized to the present day. The fundamental difference is that the capability approach is an empirical method, the basis of which for researchers is real individuals and they seek to identify an optimal, best manner for them to function in society so that they can attain their goals, potential, and life plans. Determining the correct structure of social, political, and economic relations is an important element of the theory of justice they have created. Those who advocate a capabilities approach construct their theories in slightly different ways, with both advantages and disadvantages in comparison with the classic Rawlsian theory.

**THE PROBLEM OF CAPABILITIES**

Sen first introduced the notion of capabilities in 1979 as part of his Tanner lecture that was subsequently published as *Description as Choice* in the book *Choice, Welfare and Measurement*; it also featured in the widely discussed article in the same tome entitled *Equality of What?* In the latter, Sen entered into the worldwide debate on inequalities initiated by Rawls’ *A Theory of Justice* and criticized the concept to be found within this work, that is, primary goods, which were ascribed to every individual as part of social justice, since it did not account for the full diversity of humanity and the various types of human lives.

Sen rejects utilitarianism since it believes all people are equal in terms of their needs. If all individuals have the same basic needs, then maximizing the total sum of their utility is not difficult. Utilitarianism would possibly be considered a valid theory were people identical or at least similar. The same can be said of the Rawlsian difference principle: if people were similar, the index of primary goods proposed by him would be a useful tool to assess the benefits they could achieve by living in a just society. In reality, however, people have different needs, which depend on the state of their health, age or the work they do. Thus, both utilitarians and Rawls overlook a number of essential differences, and the assessment of the benefits to the individual in the terms of primary goods leads to a “blind” form of morality.

According to Sen, there are profound differences between Rawls’ theory and utilitarianism. The former is more of a moralizing position since it aims at the impartial and fair distribution of goods, including basic freedoms and opportunities. The position of the individual in the community and the benefit
The Theory of Social Justice

that comes from their participation in society is assessed not on the basis of utility but in terms of whether they possess certain primary goods. This theory, however, does not solve the problem of social inequalities. Confronted with the differences between people with regard to the various capabilities that they possess, if we offer everyone a certain standard set of goods, as Rawls suggests, then it does not mean that everyone will begin to fulfill their capabilities from that point on since older people or those suffering from particular diseases may not benefit from the set provided to them; they need specific goods in order for them to be able to live satisfying lives.

As John Alexander notes, when attempting to solve this problem, Sen initially turned to the idea of entitlements before later replacing this with the notion of capabilities. At the beginning, the idea of entitlements featured in Sen’s works was related to famine and deprivation before being broadened into the capabilities approach, which was intended to address the issue of assessing well-being and the life satisfaction of individuals, the key criterion of which was whether they had certain basic capabilities to attain good functioning.

The idea of entitlements precedes that of capabilities in the work of Sen. In his work *Poverty and Famines* he demonstrates that famine in a country often occurs not as a result of a lack of food and a drop in the food supply but rather due to a given group having lost its previous entitlements and purchasing power. The example of the Bengal famine in 1943 is a frequently cited case in the work of Sen—one that was exacerbated by political decisions. In his view, the phenomenon of famine does not only have economic causes but also political roots that are primarily connected with the distribution of food. In rich countries, the problem of famine does not occur since if a particular group loses its entitlements and purchasing power, they are protected by a welfare system and social aid; poorer countries do not typically have such insurances. Independent of the economic development of the country, however, is the fact that a democratic system acts as a kind of insurance against famine since it affords voters or their chosen representatives to have influence on the political decisions of the government and thus counteract extreme circumstances.

The discernible shift in Sen’s works in the 1990s from entitlements to the notion of capabilities was not merely stylistic but rather has much deeper significance: “Capabilities” is not a passive term but refers to the activity and active participation of a given person in society. Sen maintains that the prosperity and social position of people should be evaluated on the basis of their ability to achieve a certain value of functioning. “The approach is based on a view of living as a combination of various ‘doings and beings’, with quality of life to be assessed in terms of the capability to achieve valuable functionings.” In this context, the concept of functioning appears, which
means the achievements of a given person, what a given individual accomplishes. This concept falls within the scope of a wider category, the general state of the person, but this state has to be distinguished from the goods that they are entitled to and from the subjective sense of happiness. Functioning has to be distinguished from the possession of certain goods that constitute its prerequisite and from the usefulness or state of happiness that is the result of their functioning.  

Capabilities or the capability to function means what an individual is genuinely capable of attainment in a society. This concept should be considered in terms of political philosophy because its implementation requires political, economic, and social infrastructure. By introducing the concept of abilities and making them the key term of his theory of justice, Sen moves from the anthropological domain to the political sphere and tries to show the practical meaning of the concepts he analyzes.  

This shift also has other significant consequences for Sen’s political philosophy, for it means a change in the concept of freedom. By transferring the weight of meaning from entitlements to the notion of capability, he is in favor of freedom in the state and in a democratic society. Freedom in his concept is an autonomous value that is closely related to the individual, but it must be implemented under certain conditions and needs to be rooted in a democratic state. It is, in his view, both a positive and negative freedom.

Cohen’s analysis of Sen’s notions of “capabilities” and “functioning” emphasizes that their function is to introduce the idea of freedom into an egalitarian discourse, one that has a broader significance than utility. However, he accuses Sen of a less than precise definition of freedom, yet this does not seem justified. Sen does not define freedom in a material sense, for example, as the range of goods that an individual can attain, but in a functional sense expressed in terms of the range of states that are possible to attain as a result of their choices. A vital complementary actor to that of the individual is the state, together with the opportunities it affords its citizens. These activities cannot be determined *a priori* because they depend on the current political and economic situation of a given country.

**CAPABILITIES, INDIVIDUAL FREEDOM AND JUSTICE**

The concept of the free choice between given alternatives, which Sen adopts in his earlier works, after Arrow, was criticized by Nozick as being much narrower in their scope than that which he describes in his work *Anarchy, State and Utopia*, which defines freedom in terms of the rights of individuals and their entitlements. He claims that the freedom of individuals in social choice theories depends on the choice between previously established alternatives,
depriving individuals of independence in choosing their actions. Defending the place of individual rights in his conception, Nozick asserts that they are much broader in scope, allowing individuals to set the limits to which their social choices may be made, enabling them to exclude certain alternatives and choose others.¹⁴

It was certainly as a result of these claims that Sen determined that the theory of social choice was a blind alley, and the choices presented within its framework are sterile due to the rationalistic and axiomatic character of the research. He moves closer to the idea of public choice, emphasizing the advantages of its empirical foundations. He is inspired by the libertarian concept of freedom present in the works of James Buchanan, one that differs from that of Nozick since it makes reference to the collective of public choices made by individuals. This was also the reason for Sen’s attempt to link this concept of freedom to the theory of social justice presented in the work of Rawls and which could be attained in a democratic state. Ultimately, however, he decides that collective goals should be defined within a system of liberal democracy—one in which debates and discussions on the objectives may be conducted. However, in order for these debates to be based on clear criteria of value, enabling the assessment of the proposed solutions, a certain problem should be addressed: how do these political and economic solutions and decisions influence the life and functioning of a concrete individual rather than some abstract concept of one? This empirical foundation has become the basis for the concept of capabilities that one possesses and which can be pursued in social life. If many potential perspectives are presented to an individual and through using their capabilities they can use them for their own good in order to attain a good life, the state that makes this possible will be a just state.

The theoretical basis for the idea of justice determined in an empirical fashion was provided by Smith, above all in his idea of an “impartial spectator” put forward in his *Theory of Moral Sentiments*. This idea, transferred by Sen to political philosophy, took the form of a comparative procedure, which, in his opinion, allows us to solve the problem of the transition from empirical and subjective data to an objective point of view and to assess the policy of the given state on the basis of its ability to enable individuals to function. Sen’s theory has been constructed on an empirical basis and allows quality to be measured to a certain extent while also taking into account the value systems adhered to by individuals.

The concept of freedom used by Sen in his works is defined in a metaphorical manner by means of various examples, including the story of the Muslim worker, Kader Mia. It shows that freedom of choice requires certain conditions that the state must fulfill, not only subjective conditions but also political and social, the conditions necessary for individuals and their
functioning. Individuals may choose from within these possibilities, but these conditions should give them the opportunity to improve their lives and level of satisfaction.

Capabilities in Sen’s view are a reflection of the human individual’s freedom to achieve a value of functioning and to be the kind of person they want to be. However, when we analyze the scope of freedom, which he ascribes to individuals, two aspects should be delineated: agency and well-being. The latter notion refers to the individual’s benefits, to their satisfaction with the fact that they are healthy, educated, and not hungry; the former, on the other hand, refers to the various types of activities that individuals perform in order to attain their goals. The distinction between these two ways in which freedom may be manifested in the life of an individual is important and is related to the general concept of man, since in the first approach, the individual is perceived as the subject of an action for which they are responsible, in the latter, they act as a beneficiary of actions or external institutions, mainly stemming from the state. However, it is always the same person, and Sen’s best way to achieve pleasure and life satisfaction is to encourage them to take action. For example, the situation of women improves dramatically in many countries when they are able to secure an independent income, gain employment outside the home, or obtain an education. These factors all impact upon women’s activity and have important consequences for their social situation and role in the family.

Thus, freedom is something to be found within us, but the possibilities of action flow from the framework determined by the environment, the government, and the state. Certainly, this is a field that is somewhat independent of human activity, one that cannot be overlooked when characterizing human freedom. Sen’s approach to this problem in his work shows that although he regards the freedom of the individual as a fundamental value, like the libertarians, he clearly disagrees with Hayek’s conception of freedom and favors a “socially sensitive” form of liberalism. Furthermore, Sen’s characteristic focus on the relationship between freedom and the quality of life of the individual is also discernible here.

The key concept of freedom in his political philosophy is characterized by the distinction present in another of its dimensions: on the one hand, it manifests itself in the private sphere and consists of controlling what happens in the life of a person, and on the other, it is present in the social sphere, which depends on external conditions. Freedom in the private dimension is the basis of activity and a condition without which one cannot conceive of the actions of the individual, so we must establish it as their fundamental right. Sen does not use the term “rights,” which is favored by libertarians, preferring the term “capabilities.” Capabilities are the foundation of individual freedom and depend on whether we make use of them because even in difficult conditions
and in extremely adverse circumstances, an individual can show they can act in one way or another if they want to. This statement became the reason for Cohen’s critique, which argued that the activity of an individual does not necessarily translate into their development and the realization of their capabilities.\textsuperscript{19} This criticism, however, is based on a misunderstanding since Sen does not claim that capabilities and their possession mean that an individual is completely responsible for everything which they may encounter in their lives, especially in terms of its economic dimension, because the manner in which one realizes capabilities and uses them depends on a second factor, namely the social dimension of freedom.

Recognizing the social dimension of freedom means that by fulfilling capabilities and taking certain actions, we enter into a relationship with our environment. This might be a conducive environment, and it may help us to fulfill our potential, but it is not necessarily so. In a favorable environment, in a state that is responsible and friendly toward man, the individual develops their capabilities and benefits from their fruition. They can get an education, enjoy access to health care, and obtain a low-interest loan for running a business. This does not mean, however, the acceptance of some form of state socialism—a position from which Sen clearly distances himself. Both socialism, postulating the abolition of private property by means of a revolution, and social-democratism, which requires the capitalist environment to reform, emphasize factors that are outside an individual, specifically the “social” conditions that alone enable the individual to achieve these goals. Freedom in the aforementioned concepts primarily depends on the establishment of a perfect structure and is not—as in a liberal approach—associated with individuals and their actions. Sen’s individualism sets him apart from the holistic and deterministic concepts of society, because in his opinion, even under adverse conditions, an individual can make an effort to escape from poverty, they can count on sympathy and help from other people or nongovernmental organizations, not necessarily from the state.

Sen tries to achieve the correct balance between the activity of individuals and favorable economic and social conditions and states that without providing man with a minimum degree of existence, the attainment and fulfillment of capabilities is impossible. It avoids a more detailed definition of these basic conditions and does not provide a specific list, thus setting it apart from Rawls (his list of primary goods) and Nussbaum (her list of capabilities). Therefore, it is reasonable to argue that Sen’s analysis is characterized by some inconsistency, meaning that we do not have a precise criterion that would help us to assess governments and institutions.

It is therefore worth asking why Sen refuses to create such a list? When discussing the Rawlsian list of primary goods, he explains that no such list would guarantee that humans are given what they need to develop their
capabilities. It can only enable people to survive but not to lead the kind of dignified life with which they would be satisfied. This is because giving elementary means to healthy people in the form of a gift is satisfactory, but they are insufficient to meet the needs of a sick person and do not improve his or her quality of life. This problem cannot be solved on theoretical grounds because it must take into account that, in reality, people significantly differ in terms of their needs.\textsuperscript{20}

This does not mean that Sen completely neglects the question of elementary means that are necessary for survival since he frequently noted in his works that a certain food supply, a minimum level of education, and access to basic medical assistance are necessary conditions that each state should provide its citizens. Access to a wider range of life options is desirable, but their scope is set by the public debate because it depends on the overall social and economic situation. How should one divide the income generated by the state? What are the priorities? A mathematical model cannot be devised to solve this—it must be the task of a democratic society to debate it and highlight the goals that govern it.\textsuperscript{21}

A phenomenon that occurs in almost all contemporary democratic states, even the most developed, is that of poverty. This is a problem for every political philosophy, including that of Sen, which is based on empirical grounds and ventures a theory of justice. As I have already mentioned, poverty in his concept cannot be defined on the basis of quantitative measures, such as GDP per capita, as is used most frequently in economic studies, but it is defined by him as a deficient number of possibilities. These are opportunities in a positive meaning, rather than negative, ones that allow the individual to improve rather than reduce their standard of living.

One of the arguments put forward by Sen against the preparation of lists of basic goods, such as those found in the work of Rawls, is their inadequacy in the sense that they do not create opportunities for individuals to transcend an elementary level of existence. The second reason may be that following every list of indispensable goods is the postulation of certain actions on the part of the state and the strengthening of its powers, something that ultimately may have an adverse effect on human freedom and initiative. This essentially libertarian argument is an obstacle here, which requires Sen, fearing a growth in state power, to minimize its role in economic activities and emphasize the importance of nongovernmental organizations and individual actions.

Sen is an empiricist; he does not want to create an abstract idea of justice that would serve as a kind of model, a form superimposed upon reality. As a liberal thinker, he seeks the opportunity to move from individual freedom to determining collective goals through different tools than the construction of a rationally justified system. He was not convinced by the theories of Rawls and Arrow, created as they were on the basis of liberalism, or by Buchanan’s
concept, which was perhaps closest to his own approach. Instead, he turned to Smith for the key idea in his theory of the morality of an impartial spectator and transferred it from the ethical to the political sphere. This idea appears here as a comparative procedure for determining goals in the public debate, allowing the transition from the level of subjective assessments and values to a higher level of collective agreements, arrangements, and ultimately, values shared by everyone; it also serves as a procedure for representing indications for those in power.

A question arises with regard to the practical application of Sen’s theory of justice to the construction of social policy or economic programs. He is confronted with the accusation that his “economics based on values” is a difficult one to translate into concrete terms or particular economic policies. This is shared by Martha Nussbaum who creates a list of capabilities, which she does not treat as human rights, although they have a definite shape and may constitute, just like human rights, the basis for citizens’ claims with regards to the state. In any case, they may serve as an indicator for realizing socially important social goals, and may also be a measure of the economic and social policy pursued by a given state.

It seems, however, that we are confronted by a problem of a methodological nature here, one that concerns various theories of justice that generally have no practical application. Although these are normative theories, it is not possible to apply them directly to economic or social policy programs; rather, they may be helpful in creating general economic policy, but their specific application is already a matter of the fate of a particular political theory, one over which its creator has no direct influence. It sometimes happens, as was the case with Mario Monti in Italy or Leszek Balcerowicz in Poland, that an economic theorist is appointed prime minister or deputy prime minister and makes reforms based on their theory, but these situations are rare.

With regard to the theory of Sen, a problem that poses particular difficulties when trying to put it into practice is that in his view, poverty, deprivation and even hunger do not rely solely on the lack of a sufficient amount of food but on the inability of individuals to achieve their capabilities, or the loss of previous entitlements. What makes things even more difficult is that current functioning of individuals at a given moment is not an appropriate measure of their situation but rather what opportunities are available for them.22

Sen has repeatedly stated that no list of basic goods can take into account the diversity of human beings and that he is opposed to the construction of lists of primary goods or capabilities. He himself created a list of such a kind but, as he emphasized, it only included the most basic abilities. As a result of this shortfall, it was merely a tool to measure poverty levels, although it achieved this more effectively than quantitative measures (GDP or GNP)
because it included qualitative data. Despite this, it remained a very imperfect tool due to the fact that it did not stem from a theory of justice.

However, he drew attention to the fact that the idea of equality should be expressed in terms of capabilities. This idea of equality was present in every definition of justice and was usually referred to in the dimensions of freedom, income, basic goods, resources and utilities. Given the diverse nature of human beings, politicians should not aim to make the income of individuals equal but rather strive for equality in their capabilities to attain valuable goals, which may coexist with inequalities in other forms. 23

There have also been attempts to measure people’s standards of living based on the criteria proposed by Sen. For example, the annual Human Development Report is the result of research on development, which is measured not in terms of income but instead on the development of human capabilities. Being a part of this report, the Human Development Index contains a ranking of living standards in different countries and includes three basic capabilities: life expectancy, access to education, and a basic standard of living. This clearly shows that comparisons made on the basis of the national income per capita are no longer the only valid criterion for measuring standards of living. 24 These basic measures seem to be the only ones that are acceptable in Sen’s concept. He does not agree with the more detailed determinants of the level of quality of life, nor does he accept the proposed list of capabilities proposed by Nussbaum because he believes that the selection of values is an inseparable part of the capability approach as a specific democratic procedure.

FROM CAPABILITIES TO A THEORY OF JUSTICE: SEN AND NUSSBAUM

Nussbaum, who adopted Sen’s concept of capability and made it one of the central categories of her theory of justice, emphasizes that in her theory it has a more philosophical character than an economic one as in its original formulation. This is done by embedding this concept in the ethics of Aristotle, where the goal of man is to achieve a good life and happiness, one that does not amount to the pursuit of pleasure but consists of many different factors. Nussbaum also draws from Aristotle’s political theory a belief in the social dimension of an individual’s life, thus she does not need to reach for a social contract to consolidate the idea of justice, but rather finds her justification in the “political” nature of human existence that drives individuals to live in a polis.

The list of ten basic capabilities created by Nussbaum is of universal significance and is based on the concepts of human dignity 25 as well as on the
modern idea of equality, one that is absent in the writings of Aristotle. She creates a “hybrid” theory in which the determination of the content of social values, as is the case with Sen, takes place as part of a discussion within the framework of democratic debate. Unlike Sen, however, Nussbaum presents a detailed list of these capabilities, serving as the determinants of a dignified life, the purpose of which is to assess contemporary societies as well as to establish the basis for claims that individuals can make toward the community and the state:

1. Life. Being able to live to the end of a human life of normal length; not dying prematurely, or before one’s life is so reduced as to be not worth living.
2. Bodily Health. Being able to have good health, including reproductive health; to be adequately nourished; to have adequate shelter.
3. Bodily Integrity. Being able to move freely from place to place; to be secure against violent assault, including sexual assault and domestic violence; having opportunities for sexual satisfaction and for choice in matters of reproduction.
4. Senses, Imagination, and Thought. Being able to use the senses, to imagine, think, and reason—and to do these things in a “truly human” way, a way informed and cultivated by an adequate education . . .
5. Emotions. Being able to have attachments to things and people outside ourselves; to love those who love and care for us, to grieve at their absence; in general, to love, to grieve, to experience longing, gratitude, and justified anger . . .
6. Practical Reason. Being able to form a conception of the good and to engage in critical reflection about the planning of one’s life. (This entails protection for the liberty of conscience and religious observance.)
7. Affiliation. A. Being able to live with and toward others, to recognize and show concern for other human beings, to engage in various forms of social interaction. . . . B. Having the social bases of self-respect and nonhumiliation . . .
8. Other Species. Being able to live with concern for and in relation to animals, plants, and the world of nature.
9. Play. Being able to laugh, to play, to enjoy recreational activities.
10. Control over One’s Environment. A. Political. Being able to participate effectively in political choices that govern one’s life; having the right of political participation, protections of free speech and association. B. Material. Being able to hold property (both land and movable goods), and having property rights on an equal basis with others; having the right to seek employment on an equal basis with others; having the freedom from unwarranted search and seizure.26
There is certainly some similarity between these basic definitions of human capabilities and human rights or definitions of natural rights, but capabilities differ from them because their implementation requires the correct political and economic structure, and they do not have an absolute status, but rather, their detailed content and scope are determined by means of social debate.  

The flaw in this conception is Nussbaum’s tacit acceptance of the assumptions concerning this political and economic infrastructure, such as the possibility of providing all citizens with jobs. This is reminiscent of a socialist utopia and the right to work in it—a postulate that no state can really guarantee in full. As with the Marxist ideal of a dignified life, so the above list of abilities remains a set of postulates, assuming the good will of rulers and a relatively high economic level on the part of the state, which enables their implementation. There is also a cosmopolitan belief that the capabilities and the values hidden within them—ones which are characteristic of the West and which remain the subject of the postulated activities—will be valued in all cultures and groups in the world.

Sen approaches this problem in a more realistic way and, despite sharing the cosmopolitan conviction of the similarity of the basic capabilities that are valued by people, he does not specify them in detail, being aware of the political and economic differences that exist in the modern world. These two theories of justice, founded as they are on the notion of capability, share the same weakness despite the differences between them: they do not define how we are meant to move from these postulates to their implementation, since neither indicates a path other than a democratic debate that determines the scope and detailed content of the capabilities. Neither provides any indication of what specific actions are to be taken and which institutions might be used for this purpose, except that Sen mentions the role of nongovernmental organizations, and Nussbaum emphasizes the importance of cosmopolitan education. It seems that in this respect, Rawls’ theory of justice has an advantage over their concepts since he presents the institutional framework necessary for the implementation of his philosophical idea of justice.

Nussbaum, like Sen, does not accept the above argument as valid, questioning not only Rawls’ theory but also all contractarian approaches to the problem of justice due to their theoretical flaws that are revealed during their practical application. These theories are based on the idea of a contract between individuals, beings who are guided by a rational way of thinking; the rules of justice are determined by such entities and for themselves. In reality, however, this approach omits whole social groups: women (in countries such as India, where for sociocultural reasons they do not have equal status or the same opportunities as men for work), people with physical disabilities (who cannot make purchases in a store like healthy people because they cannot overcome obstacles such as stairs), mentally handicapped people,
and animals (to which the modern world refuses to ascribe the status of citizens). Thus, according to Nussbaum, no concept of justice based on a social contract, including that of Rawls, captures the specific problems of these categories of people and animals; it is only the capability-based approach that allows the creation of a complete theory, one that encompasses the aforementioned groups.\(^{28}\)

To draw attention to some of the social groups overlooked in the current discussion on justice, Nussbaum brings a new and valuable insight to modern political philosophy, but the solution proposed by her on the basis of the notion of capability is in fact similar to that of Sen. Their positions are close to relativism, although they both attempt to avoid its extreme form. Sen does not try to establish the criterion of social justice and delegates the detailed definition of “what one deserves” to democratic debate, while ensuring that absolute freedom in defining social values and goals becomes a comparative procedure for decision-making processes based on the notion of an impartial spectator. He perhaps places too much trust in democracy and in public debate, failing to take into account the role of interest groups and the potential for the public to be manipulated by them. Nussbaum, in turn, does not wholly trust democratic debate but provides a procedure that we should follow when choosing collective goals. Its concept also aims to avoid total freedom in determining collective goals, although it allows a multitude of possible interpretations within this procedure.

In fact, these differences between the two theories of justice are not deep, but it must be emphasized that Nussbaum is not merely a commentator or interpreter of Sen’s political philosophy. She borrows his concept of capability but constructs her theory of justice on assumptions that are similar to those that appear in Rawls’ concept, as well as on the stoic-Kantian concept of man and the world as a rational structure; she also emphasizes the importance of education as a means to provide individuals with the requisite rationality for making decisions as part of their upbringing.\(^{29}\)

Both Sen and Nussbaum critique the Rawlsian theory of justice on empirical grounds, highlighting that it does not take into account the unique needs of individuals and entire social groups as well as factors resulting from the prevailing social mentality. The capability approach that they propose has, in turn, another disadvantage: the justification of the theory of justice is made on ethical and political grounds. For Nussbaum, this is done by means of ethics and stoic-Kantian cosmopolitanism, the conviction that we are similar to one another and that we are connected by a solidarity that unites all of humanity. Sen’s concept is based on the conviction that we have the right to a good life as human beings and that basic human rights are respected, combined with a cosmopolitan assumption that the same democratic mechanisms can be applied everywhere on a global scale.
Nussbaum’s attempt to concretize these basic rights in the form of a list of capabilities seems, however, to be a utopian collection of wishes that is not translated into the language of political practice, just like Sen’s more general directive that specific principles of justice are determined in the course of democratic debate. Not all countries in the world are democratic, and even the debate within those countries involves interest groups. Thus, attaining impartiality in a genuine democratic state may be difficult, if it is possible at all. Even if it were possible to achieve impartiality within the framework of this debate, it is unclear on what basis the decision made within it would oblige politicians to act. Sen’s theory does not describe the translation of these deliberations into political institutions in a democratic state, aside from the fact that in such a state, citizens are able to exert pressure on the government by participating in general elections. This is not a sufficient safeguard, however, as these opportunities to exert influence happen at long intervals apart from one another. In the meantime, the government is free to carry out actions, sometime very radical actions, over which citizens have little or no influence. Therefore, considerations on the idea of Sen’s justice remain, like in the concept of Nussbaum, as a set of moral postulates. Their practical application reveals the theoretical flaws in these concepts, just as is the case with Rawls’ theory of justice.

Nevertheless, both of these theories move the debate forward considerably in relation to Rawls’ works on social justice. Sen’s analyses enrich our understanding of freedom and equality—the two concepts constituting the Rawlsian idea of justice. Nussbaum, in turn, like Rawls, focuses her attention on social groups but introduces new groups of people and animals into thinking about justice, which had previously not been taken into account. Therefore, the merit of both concepts is that they exceed the framework of the discussion initiated by Rawls. Their significance lies first and foremost in changing the existing ways of thinking by introducing new concepts that are essential to any further research on this problem.
Sen’s and Nussbaum’s scientific writings are characterized by an interdisciplinarity that shows the versatility of their research. This is mostly true of Sen, whose scientific interests are much more than political philosophy, encompassing economics as well. However, Nussbaum also displays her considerable erudition, and her contributions to ancient philosophy research (Stoic thought and the concepts of Aristotle) as well as the philosophy of culture and religious studies deserve particular attention.

Nonetheless, they have moved to investigate political philosophy having been inspired by Rawls. As a teaching assistant, Sen taught a seminar together with Arrow and Rawls, who also encouraged Nussbaum, then a researcher of ancient philosophy, to take an interest in political philosophy. Both repay their debts of gratitude through dedication of their most important works devoted to justice.

The fact that this was their inspiration does not mean, however, that these works constitute the completion and continuation of the main elements of Rawls’ theory of justice in a spirit that is completely loyal to its author. Nussbaum admits at the beginning of *Frontiers of Justice* that she intends to take up the problems of disabled people and animals, which Rawls had either overlooked or did not solve, but in fact her approach is fundamentally different to that of Rawls. Sen, however, goes further and emphasizes that his theory of justice is an alternative to Rawls—it takes it up the baton by challenging his concept and tackling the issue in a new way.

The difference between the theories of justice of Rawls, Sen, and Nussbaum are primarily of a methodological character and rest on the fact that Rawls constructs his theory on the basis of a hypothetical social contract while Sen and Nussbaum reject the rationalistic method that leads to

*Chapter 7*

**The Capability Approach**
principles of justice, proposing an empirical approach instead. Their departure point is the experience and observation of people and phenomena in reality, before confronting this knowledge with theoretical principles. This is not a purely inductive method, as we would have in the natural sciences, but rather a synthetic approach that encompasses both theoretical hypotheses and empirical facts that are subject to generalization and presented as typical situations.

These methods lead to the creation of theories of justice on their part, which are born of the philosophy of the Enlightenment. The characteristic idea of the social contract from this period was already used in modern philosophy to explain the genesis of the state and to justify political obligations, namely the obligation of citizens to obey the laws of the state. It found its application in Rawls as a tool for ensuring impartiality and to create a model situation that enabled the principles of justice to be derived by means of rational reasoning. In a similar manner to Rawls, who utilized this Enlightenment idea in an original manner, Sen took inspiration from the ethical thought of the period, above all the moral philosophy of Smith, in order to transfer his idea of the impartial spectator to the arena of political philosophy and to create the basis for a comparative procedure that would permit justice to be defined. Nussbaum constructs her theory on an Aristotelian foundation of man and his dignity, while also appealing to the Marxist idea of the human being. This was intended to furnish her with the necessary foundations for her idea of human capabilities, which she had taken from Sen.

In creating her theory of justice, Nussbaum confronts it with the Kantian conception of a person, which influenced Rawls, highlighting that the latter does not sufficiently take into account certain groups that she believes should be encompassed by a theory of justice, such as people with disabilities or animals. This criticism extends to all political theories that are based on a social contract since Nussbaum considers them to be unable to achieve this objective. Her concept is based on a list of central human capabilities that lay the foundations for fair legislation in a society that respects them, as well as for a concept of justice in the international dimension. This list is not an empirical generalization, but one constructed on the basis of intuition, which, as Nussbaum claims, was also the foundation of the Rawlsian construction of the original position:

In justice as fairness, intuitions and considered judgments are consulted in the design of the Original Position; in the capabilities approach they are consulted in the making of the capabilities list. This difference is not surprising, since justice as fairness is a procedural approach and the capabilities approach is an outcome-oriented approach.
For Nussbaum, even though the theory of Rawls has a procedural character, while her theory places the emphasis on the outcomes of human actions, both have a common attribute in the fact that their theoretical principles may be subject to revision in light of empirical findings; they are thus both similar in a sense to the approach of Aristotle. At the same time, she emphasizes that Sen, who does not accept the list of central human abilities she has created and indeed rejects the very idea of constructing such detailed lists, cannot therefore base his theory of justice on the notion of capability: “Sen’s reluctance to make such a list makes it difficult for him to use capabilities to define a theory of social justice.”

Both theses ventured by the American researcher are invalid, however. First, the theories of both Rawls and Sen are not purely procedural and second, Sen de facto bases his theory of justice on the notion of individual capability but does so in a different manner to that of Nussbaum. Human capabilities play an important role in Sen’s theory of justice, despite its procedural nature. None of their proceedings are determined in a top-down manner to lead to a detailed determination of justice, which makes it akin to libertarian theories, although in contrast, Sen’s approach attempts to combine two of their features in his description of human actions: their indeterminate, processual character and consequences. In his opinion, proceeding according to the rules or principles of a certain procedure cannot be detached from the effects that these actions bring about.

This is based on Sen’s conviction that man is both a free and rational being, both capabilities having developed over the course of the history of societies in accordance with the idea of progress understood in the spirit of Condorcet. Ultimately, both Sen and Nussbaum’s theories of justice make reference to the concept of human capabilities to a greater or lesser extent and take issue with Rawlsian theory. Nussbaum is constantly engaged in this polemic in her works, trying to show that her concept, despite being based on different foundations, does not contradict the Rawlsian approach, but rather corrects and addresses the imperfections within it. Sen, however, rejects the Rawlsian rationalistic methodology and creates his own theory that is based on empirical foundations.

**NUSSBAUM AND SEN AS THE SUCCESSORS OF THE RAWLSIAN THEORY OF JUSTICE**

The political philosophy of Rawls has a rationalistic character; its objective was a theory of justice of an ideal form, constructed on the basis of its adopted assumptions, the theory that could subsequently be applied to the reality of contemporary liberal-democratic states. The model formed in his
A Theory of Justice was to be an analytical and deductive scheme in the spirit of Kant, and thus should be regarded as necessary and possessing universal applicability. Later, in Political Liberalism, Rawls altered the initial conditions somewhat, attempting to root his theory in the reality of contemporary Western democracy, above all, that of the United States. Justice was still seen as a kind of Kantian regulative idea, serving as a template for society that could be used to frame a constitution and legislation, becoming a reference point in the resolution of conflicts and controversies.

Rawls introduced boundaries in his concept between ethics and political philosophy, and between the sphere of private convictions and the field of public contractual regulations. The principles of justice stemmed from agreement rather than from a particular ethical system, as was the case with utilitarianism, or from the natural rights of individuals, as it does in libertarian notions. The justification for political justice in the Rawlsian system was exclusively the social contract and, moreover, it was characterized by normativism since its objective was to create criteria for assessing existing societies and political systems. In a more detailed form, this theory was supposed to be an instance that facilitated the assessment of claims made against the state by various social groups, those that are justified in the name of justice and those that should be rejected.

Sen’s theory of justice, which was formulated on the basis of a long-term study of particular economic and political philosophy issues, is on the one hand a continuation of the original work of Rawls, since it serves to create an objective basis for the just distribution of goods in a democratic state, while on the other, it has a different structure and rests on other foundations. The most fundamental difference is the consideration of justice with real, human individuals as its basis, and not—as in the Rawlsian conception—a rational being that is either an abstract construct or a representative of a specific social group. Sen’s approach is different as he recognizes man as a concrete being, one which is both rational, caring for his interests, and also emotional, who is sensitive to the fate of other people and is able to subordinate his egoistic desires in the face of obligations.

However, the methodological differences between Rawls and Sen express themselves not only in terms of their anthropological foundations but also in their very construction of their theories of justice. Both theories are often regarded as being of a procedural character, as justice is not defined within them as a materially defined value but rather as a procedure that needs to be applied in order to attain just results. However, in his work Rationality and Freedom, Sen highlights the consequentialist elements in the work of Rawls, since he presents in A Theory of Justice a procedure that derives its principles of justice from an artificial original position and, as a result, must lead to the selection of two specific principles. Subsequently, in analyzing Buchanan’s
competing procedural theory of public choice, in which the selection is made by real persons, he claims that it is not purely procedural, since certain restrictions are already imposed on the individual in the initial phase of the formation of preferences and on their results, in a similar manner to Rawls theory, in which a list of primary goods is created. He also emphasizes that in reality, it is difficult to separate a procedure from its consequences with regard to the action of an individual and this is why it is necessary to combine these attitudes within the broader framework of a theory of justice.

Sen presents this solution in *The Idea of Justice*, where he sides with consequentialism, albeit not in its classical utilitarian version. Instead, it takes the form of a solution enriched with emotional factors and with responsibility in terms of considering the procedures of human actions and assessing their resulting effects. He discusses two situations here. The first is taken from the Bhagavad Gita (Gita)—a part of the ancient epic Mahabharata—and depicts the discussion between the great mythical hero Arjuna and the god Krishna concerning the battle in Kurukshetra. The second is taken from World War II and describes the ethical dilemma faced by the creator of the first atomic bomb, Robert Oppenheimer. In much the same way as the warrior Arjuna, who has doubts as to his role in the battle that will have many casualties, the American physicist directing work on the atom bomb is confronted by the following dilemma: should a scholar continue his research without thinking that the application of his discovery might bring about the extinction of mankind? Ultimately, they both follow Krishna’s recommendation of fighting for a just case, something which is interpreted by Sen as duty-oriented behavior.

Sen treats this story as an example of the dichotomy between the life-centered and full of compassion attitude of Arjuna and the duty-centered and consequence independent deontology of Krishna. It seems that he tends to support these profound doubts of Arjuna as he maintains that if we ignore the results and focus purely on the procedural aspects, we lose all sense of responsibility. Human actions simultaneously have both a moral and a political dimension and in their assessment we must take into account both the aspect of the personal responsibility of an individual for themselves and their actions, as well as their responsibility toward other people. Thus, the radical separation of procedures from their consequences in assessing human action is not the right way in which to proceed if we want to define the idea of justice.

Sen also focuses his attention on a problem that is connected with the assessment of human actions, namely the danger of relativism and arbitrariness in assessing the results of these activities; however, he believes that these difficulties can be overcome. Given the assumption of the rational nature of man and his capability to rationally assess phenomena during public debate, he believes it is possible to reach an agreement in society concerning the
basic principles of justice and to develop a common standpoint as a result. At the same time, he posits the existence of certain boundary conditions regarding who can participate in the public debate, distinguishing his position from that of utilitarianism; he adopts the idea that they must be adults who have the capability to think rationally and have the right to participate in political life. These conditions are of a commonsensical nature and do not lead to elitism. On the contrary, the author of *The Idea of Justice* is an advocate of democratic, free decision-making by members of society in matters that concern their collective life.

Despite the fact that Sen’s approach values empiricism, he does not use classic inductive methods. He sets certain conditions on participants in the debate, which are taken from empirical research material, but his move to general conclusions does not proceed by summarizing all possible points of view but rather on developing a common standpoint. It is thus the result of compromises, comparisons and reflections; this is a collective reasoning that takes into account not only the local sociocultural conditions but also those solutions that have been adopted in other countries in order to devise the most beneficial decision for members of a given community. Sen is sometimes accused of maintaining an “economic point of view,” in that when considering the issue of fair distribution, he primarily takes into account the material well-being of individuals. This is, however, an unjustified accusation since the very nature of capabilities, which he regards as forming the foundation of any just social decision, exceeds mere material boundaries. In Sen’s notion, as in the conception of Rawls, the goal of justice is to delineate the principles of the distribution of various goods, both material and spiritual.

Why then does Sen not follow in Rawls’ footsteps and choose to adopt a different approach? The objection that he raises against the Rawlsian conception, as well as to utilitarianism and libertarianism, is that they disregard the diversity of human existence in its concrete, living dimension. A theory of justice, according to Sen, should not only take into account the actual state of affairs—how a person lives today and what are their needs in a given society—but also what they might achieve elsewhere. The capabilities that an individual might fulfill are just as important as the capabilities that they might be able to were the condition otherwise. Both society and state are not treated as fixed entities to which an individual should adjust but rather one that exists for the individual and is brought into existence by them. However, this common element between the political theory of Sen and the libertarianism of Nozick does not lead them to identical conclusions.

Like the libertarians, Sen does not absolutize the state but, in contrast to Nozick, he does not completely reject a role for government in ensuring fair distribution, while emphasizing the important functions to be played by
nongovernmental organizations, charitable institutions or self-help activities. Nevertheless, the assessment of the state in his approach amounts to answering the question of to what extent it provides a good life for its citizens and enables them to fulfill their capabilities. This is the fundamental element around which Sen’s reflections on social justice are centered. He chooses to describe them as ideas, not theories, and this is perhaps ascribable to the different approach it takes to that taken by Rawls’ political philosophy.

However, yet another question arises: Do the above considerations on justice and their attempts to precisely define it have practical significance for the life of citizens in a democratic state or, on the contrary, are they merely a matter of academic debate while political life goes on with its own course? It seems that new ideas slowly affect society by means of the education of younger generations, and the views thus implanted are then introduced into public debate and are reflected in political solutions, institutions, and legislation. This is a process that extends over time, during which the above-mentioned theories naturally undergo modifications when confronted with practice.

At present, most Western liberal democracies are under the influence of Rawlsian theory, and social justice has become a subject of public debate among the societies that inhabit them and who interpret it in different ways. In the concept of Rawls, the tax system of a given state should be constructed in such a way as to not increase the differences between the poor and the rich. Research, on the other hand, indicates that the reality is different, with social and economic inequalities growing in both high- and medium-developed countries in a manner that is inconsistent with the assumptions of his theory of justice. In fact, Rawls himself bitterly commented on the fact that the United States is actually governed by banks that put their interests above the good of the community and that this, as one might expect, also applies to many European countries. The idea of justice created by Sen, as a form of social deliberation, also seems to be somewhat overly idealized. It assumes that the individuals participating in it express their preferences openly and honestly, aiming for a collective consensus. Meanwhile, real political life is largely dictated by interest groups, and legal regulations are often subordinated to the goals of a particular ruling party or party politics. In the public debate, issues of worldview and ethics come to the fore, not merely the issue of the just distribution of social burdens and benefits. The freedom of the press and the media, which was attained with difficulty in the countries of Central Europe after the overthrow of communism, often turns into a political spectacle instead of serving to shape public opinion and initiate debate, ultimately becoming interested in sensationalism.
Chapter 7

A CALCULUS OF CAPABILITIES

Sen’s proposal that the process of identifying specific justice principles be transposed to democratic debate seems unrealistic, since just like the model of deliberative democracy advocated by Habermas, there must be institutional limitations on the interests of the participants in the debate and total freedom in its results.

The solution to the above-described problems proposed by the theory of public choice is the unanimity principle, derived from the work of the Swedish theoretician Knut Wicksell and adapted to the requirements of modern democracy by James Buchanan and Gordon Tullock in *The Calculus of Consent*. The model of the state proposed by them, that of a constitutional liberal democracy, allows it to well protect the interests of its citizens, while simultaneously being in accordance with Sen’s defense of the individual and their particular capabilities. This model does not exclude debate but only defines the types of decisions that must be taken unanimously (known as constitutional choices), and which can be adopted by a majority of votes. Several public choice theoreticians found in their later works, however, that these limitations were insufficient and called for ethical principles to be introduced into political and economic life, as well as recommending an assessment be made of current policies by citizens. It seems that a good political measure would be the greater dissemination of the unanimity rule, one that would apply not only in the making of constitutional decisions regarding high-order legislation but also matters of lesser importance. This would necessarily entail the broader introduction of the principles of direct democracy to current political practice.

This necessity was indicated by research carried out in the 1990s in both “mature” European democratic societies and new democracies. Since then, not much has changed in this respect, with only Switzerland being a country in which referenda are often used to resolve important issues. Numerous recent manifestations of citizens under the banner of the Occupy Wall Street movement in the United States, as well as the current demonstrations of the “gilet jaunes” in France, illustrate that they are often forced to engage in radical forms of protest when the government limits freedom of speech or does not counteract falls in living standards.

The application of the unanimity rule and instituting referenda might prevent this, something that would be beneficial for both citizens and the authorities, and would serve to justify the laws enacted. Furthermore, it would help to stop the government from backtracking, under the influence of social protests, from existing legal regulations or ill-conceived reforms, something that ultimately weakens the authority of the ruling party. However, it is completely unsanctioned that a government might refer to the result of
a referendum and announce that the result secured by a small majority is binding, as was the case recently in Great Britain over the matter of Brexit. Public choice theorists argue that simple majority voting does not justify the taking of fundamental decisions for the future of the state, and relying on its outcome can only aggravate the crisis or lead to riots. If unanimity cannot be achieved in the name of social peace, the status quo should be preserved.

How about the level and quality of life? Sen has repeatedly stated in his work that determining the standard of living is extremely difficult, and the measurement criteria used in the form of GDP are sometimes imprecise. There are also other measures, but the decision as to which one to choose is always arbitrary. GDP is widely recognized as an objective measurement instrument, but the global economic crisis at the end of the first decade of the twenty-first century undermined the belief in the value of this criterion as the only definition of the standard of living and the measure of prosperity.20

According to Sen, this most popular measure of economic activity is insufficient because it only takes into account market production and this does not automatically translate into the improvement of the quality of life of individuals. The previously mentioned example is the situation that took place many years ago in Bengal, when famine prevailed despite the country having experienced sudden economic growth but more often there are less drastic events of a similar nature. In a similar way, the economic situation prevailing in many countries can be determined in a negative manner by its citizens since they are experiencing a decline in living standards and are thus calling for changes in economic policy. At the same time, however, it might be perceived positively by experts who devote more attention to favorable economic growth rates. This confirms Sen’s belief in the insufficiency of measures of human well-being applied in economics used to date and illustrates the need to develop new criteria that would take into account the impact of economic development on the standard of living of individuals.21

In the years 2008–2009, Sen participated in the work of a committee commissioned by the then French president Nicolas Sarkozy, which aimed to investigate what factors actually affect the quality of life, and to develop new methods for its measurement or to adapt the existing measures. The conviction that GDP per capita itself is not a valid criterion became widespread: doubts were raised both in terms of how gross domestic product is calculated as well as identifying it with the measure of well-being.

Seeking an answer to the question of how they could change the existing measurement scales, the members of the committee considered, among other sources, Sen’s earlier research with Mahbub ul Haq, which had been commissioned by the United Nations. This had led to the formulation of the Human Development Index (HDI), including indicators of well-being and the freedom of individuals. This index illustrates that the ranking of countries
according to indicators covering the health and education of citizens can significantly differ from one based only on the criterion of productivity. In addition, Sen’s concept of humans, one that refers to the notion of human capabilities, greatly influenced the views of committee members. During his research, he analyzed and considered numerous issues—GDP, defense spending, and criteria for measuring quality of life—in order to solve the following problem: “How to capture appropriately the diverse situations confronting different individuals. Most of the statistical indicators focus on averages; but when inequality is changing, what happens at the bottom, or even the middle, can differ markedly from what is happening, say, to per-capita GDP.” In conclusion, it was stated that the current measures used to assess economic performance need to be changed because the nature of production has also changed—services such as medical or educational services are difficult to evaluate in terms of their worth. In today’s world, these services are usually provided by the government, but their measurement is incorrect because it is based only on the expenses incurred by them.

In general, the work of the aforementioned committee shows that human well-being is a multidimensional phenomenon, and thus any attempt to measure it should take into account not only the material standard of living (income, consumption, property) but also factors such as health, education, individual enterprises (including work), influence on the political decision-making process, social ties, the natural environment, and economic and material uncertainty.

All of these aspects help to shape human well-being, but they are not taken into account by measures that are based on income. The report’s recommendations emphasized that both objective and subjective dimensions of well-being are important, and that indicators of quality of life should be taken into account in the shaping of social policy. These indicators can be based on philosophical and psychological concepts (utilitarianism) and focus on research into happiness; they can also be of an economic nature and focus on the fair allocation of goods and services, according to the preferences of individuals; finally, they can also take into account Sen’s capability approach, one that is based on the belief that human life is a combination of states of affairs and possibilities, while freedom is a choice from among the available options.

The crowning glory of Sen’s political philosophy, and above all his theory of justice, stems from his anthropology. In an original way, he adapts the Rawlsian concept of justice as fairness, covering the two dimensions of human life: spiritual and material, and combines it with the capability approach. The concept of the individual proposed by Sen is based on the possession of specific capabilities, which distinguishes it from the abstract definition of a person (Rawls), the consideration of schematic and impoverished individual
characteristics (Arrow), or from the reduction to a purely economic model of *homo oeconomicus*. In introducing this concept, Sen noticed that if the functioning of an individual concerns their living conditions, then capabilities refer first and foremost to their freedom. He added that the scope of freedom should not be measured solely in terms of a number of alternatives, because it also depends on their quality in terms of individual well-being, and whether it improves their lives or makes them worse. We reach here the essence of Sen’s position: the good of individuals and the assessment of their quality of life consists primarily of ensuring the realization of their capabilities, and this very concept allows us to grasp the fundamental attribute of man, namely freedom of action, and how the state should be organized is precisely in light of this. For Sen, the freedom of the individual is inseparable from their rationality; both of these properties, both in their individual dimension and in collective life, must be treated as inseparable since they establish the ethical basis for his political philosophy.
Nussbaum takes as the basis for her theory of justice presented in the work *Frontiers of Justice* the Rawlsian political concept of a person, one that does not describe an individual or human nature but rather a more general notion upon which social agreement and a just society may be constructed. In both cases, it is a selection procedure based on the fact that these philosophers choose those human traits that are useful from the perspective of the concept of society and the state that they adopt, those which support it and allow the determination of its optimal shape.1

There is a crucial difference between the two approaches, however, in that Nussbaum focuses above all on human dignity and defines it in a different manner to Rawls, referring this concept to a particular individual. For Rawls, as with Kantian ethics, the basis of dignity is the rationality of man, while for Nussbaum, this dignity is rooted in the very fact of being a living organism. Relying on Aristotle’s conception of man, she presents a naturalistic interpretation of his theory but focusing on his work on zoology rather than his *Nicomachean Ethics*, a position she would find more difficult to maintain. In this latter work, when considering the notion of happiness, Aristotle emphasizes the fundamental uniqueness of man from other living beings, something that stems from his ability to use reason. He thus believes that happiness consists of developing activities that are associated with this ability, and therefore on leading a contemplative life. In Nussbaum’s interpretation, however, Aristotle is primarily the creator of a complete conception of man, a philosopher who did not follow Socrates and Plato in sharply delineating the corporal from the spiritual in human nature. As she writes, “This Aristotelian conception situates human morality and rationality firmly within human animality, and insists that human animality itself has dignity.”2

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1. Nussbaum
2. Nussbaum
In this manner, by defining a person and adopting the concept of a person based on such an understanding of dignity, Nussbaum combines it with the concept of capabilities before extending the scope of the approach to encompass the mentally handicapped and animals. In her opinion, a theory of justice formed on the basis of the capabilities possessed by living organisms is one that can be applied “beyond rationality and humanity.” Although this departure from the anthropocentric point of view is somewhat reminiscent of Skinner’s behaviorist conception, Nussbaum has no intention of abandoning political philosophy and restricting herself to undertaking psychological considerations. She is determined that the laws and political institutions made by people take into account not only the mentally handicapped but also the animal world. These, she argues, should also be encompassed by a theory of justice and treated according to specific rules and laws, not only relying on human compassion or the lack of it. 3

A question arises, however: Is human dignity a notion from within the field of political philosophy? It would seem that it rather belongs to ethics and political philosophy need not make any attempt to define it. On the other hand, human dignity is a fundamental trait of every entity, and the political philosophy of liberalism is based on the assumptions of individualism, also in the ontological sense, which assumes that the individual is the basis for reflections on society and the state. Human dignity is also certainly defined by Christianity, according to which man, like other beings, is one of God’s creations. In the Enlightenment, post-Cartesian understanding, however, it is rooted in the rationality of man as an entity possessing reason as most eloquently expressed by Kant in *The Groundwork of the Metaphysics of Morals* (1785). It is worth noting that in this modern way of understanding dignity, the animal world is excluded, becoming merely a feature of human mercy in these conceptions. It was only Darwin’s theory of evolution that created a smooth transition between these two worlds, opening up the field to naturalistic concepts and utilitarianism in which the boundary between the animal and human world is fluid. 4

Nussbaum sees an ally in utilitarianism, unlike the theories of Contractarians and Kantians, but it is certainly not a position that she completely accepts. 5 In her opinion, utilitarianism proposes too narrow a plane upon which to unite people and animals, namely the ability to feel pleasure and pain. In her view, meanwhile, every living thing should be considered in its entirety, taking into account its functioning, development, and prosperity. This is why she turns to Aristotle, who saw the reflection of beauty and perfection in the living organism, in all its spiritual and corporal structure. One can also discern a legacy leading to Leibniz and the concept of a monad as an entelechy, but Nussbaum does not develop this thread further, and the reference to the ancient concept of man allows her to avoid the narrow understanding of naturalism that is
connected with materialism and atheism. The kind of Aristotelian naturalism to which she refers excludes neither the spiritual sphere nor religious references in attempts to define man and human nature. While it does not exclude them, it sees these areas as irrelevant elements from the perspective of her goal, namely the incorporation of mentally disabled people, animals, and perhaps even the natural world, within a theory of justice. It seems that this development is needed if we consider the carelessness and cruelty of people not only to the world of animals but also to the natural world, so one would presumably want this sphere to also be encompassed by legislation that takes their unique nature into account.

Nussbaum, however, only extends the community of justice to the animal world because they possess human-like capabilities and the rights that stem from them. As I mentioned before, her use of the concept of agents at the same time allows them to be included in the area of justice and legislation based on it, as well as acting as a starting point for claims to be made on their behalf. In addition, the characteristic feature of this concept is that the capabilities and powers flowing from animals are vested in individuals rather than particular species. According to the American thinker, the goal of a just society is not the theoretical definition of the collective good but rather bestowing a dignified life upon various human and animal beings, one in which they will be able to realize their abilities. Does this lead to the postulates of vegetarianism and a strict ban on killing animals to obtain meat? Nussbaum is not an advocate of a form of global vegetarianism because she believes that ending animal husbandry on a global scale would disturb the biological balance; furthermore, it is unclear what the consequences would be for humanity. However, she does not agree with Bentham’s claim that killing animals raised for meat can be justified if it is done so without pain, since they are denied the right to lead a relatively successful life and functioning. She emphasizes the complexity of this problem but does not provide a convincing solution since her goal is rather to show the existing doubts and objections to the current state of affairs.

This perhaps reveals a weakness on the part of the theory of justice created by Nussbaum since it does not take into account the conflict of interests between individuals and species, both those of humans and all other living beings. Meanwhile, conflict is an inseparable part of life and is one that every ethical and political theory must confront. The aforementioned dilemma regarding the killing of animals by people is an ethical conflict that violates the fundamental rule of every form of ethics: the maxim of thou shalt not kill. In her theory of justice, Nussbaum attempts to consider this issue on the basis of political philosophy but becomes entangled in ethical dilemmas. These do not help to solve the abovementioned problem because a theory that is framed on the basis of the capability approach does not take into account the conflict
of interests, and the extension of the concept of justice to other species brings ethical problems to the sphere of political philosophy.

In her approach, Nussbaum accentuates human emotional qualities to show that this concept, combined with the idea of social justice, enables not only the peaceful resolution of political conflicts but also the reconciliation of moral reasons, the legitimacy of this claim lying in the fact that, in her opinion, we are able to agree because we all feel the same way. This is obviously an erroneous assumption that does not take into account the relationship between the different ethical and religious systems that exist in societies, one that often makes it difficult to take up a cosmopolitan position. According to the author of Political Emotions, the solution to this issue is a properly conducted education in a liberal state because emotions can be shaped just like the intellectual abilities of a person; nevertheless, this seems too idealistic when we consider the current political reality.10

However, the introduction of the issue of the relationship between man and the animal world to political theory is a valuable element of her concept, and her attempt to solve this problem using a theory of justice is significantly novel among current considerations on justice. Nussbaum is undoubtedly right when she postulates that this problem should not only be recognized and addressed within a given society but also in the context of global justice, with principles that can be extended to cover the whole world.11 As a means of applying these thoughts in practice, the American thinker proposes a cosmopolitan education and devotes considerable attention in her works to the problems of university education and training in order to create the right cosmopolitan attitudes among young people, which would sensitize them to the fate of other sentient beings. To this end, she describes the educational programs at a number of selected American universities that, in her opinion, successfully introduced Socratic values into their curricula: the ideas of tolerance and cosmopolitanism.12

The theory of justice presented in Frontiers of Justice is one that addresses the needs of groups of people and animals that had been overlooked by Rawls but is nevertheless of an idealistic and essentially utopian nature. This theory includes a number of moral postulates referring to the emotional factors of human nature while neglecting the political dimension of how these abilities actually function, with a particularly glaring omission being the problem of group interests and material benefits. The question of the animal world and caring for their fate on a global scale has already taken on a new dimension in the present day since according to alarming reports, many species are faced with extinction as a result of destructive human activities. Sometimes the reason posited for this is climate change, but there is also the thoughtless killing of animals, above all in Africa and not only here. This is no longer a problem that can be counteracted by means of a cosmopolitan education;
while it can certainly create a moral sensitivity in people, these problems can only be solved by political means. Thus, theories that take into account the issue of animals, including Nussbaum’s concept of justice, are in themselves only moral postulates but they may prove useful as a basis for producing detailed legal norms and political decisions.

The relationship between ethics and justice in Nussbaum’s ideas manifests itself in a similar way to that of the works of Rorty, whose social ethics are based on foundations other than the typical Christian and rationalist theories. This philosopher introduces values such as kindness and compassion into the Rawlsian tradition, which, apart from individual freedom, are the pillars of his concept. However, it is not built as a systematic theory of morality but is instead a pragmatic approach as a certain program of action that aims to change contemporary American society. The goal is a democratic and free society in which individuals will be able to develop their abilities—a moderately egalitarian state, where social inequalities are systematically eliminated and in which the ethics of solidarity, and especially values related to it—compassion and sensitization to the suffering of others—are respected. And although these values, such as egalitarianism, kindness, and compassion, have already gained recognition and are present in the concepts of Sen and Nussbaum, Rorty’s social ethics constitute an original contribution to the new strain of liberalism, which he has helped to shape in his works. 13

Rorty’s ethic is constructed in connection with the problems of the contemporary, democratic liberal state and make an attempt to solve them; essentially, it forms a program to shape the character of modern man on the basis of a sensitivity to suffering and cruelty, and the moral ideal present in it should serve as an educational model and its diffusion among members of democratic society will result in moral progress. 14 The justification for this position was Rorty’s fear of the rise of dogmatism and fundamentalism, which the philosopher regarded as the greatest threat to the freedom of individuals, and thus he sought to create an educational program that would shield them from it. The fundamental goal of his efforts was to work toward a more egalitarian America, a society of the future in which inequality had been reduced and where justice had a greater role in the formation of political institutions. As a consequence of his liberal egalitarianism, Rorty adopts the democratic form of the realization of policy, one that is based on the ideals of solidarity, the reduction of inequality, and reaction to any atrocities. Also taking the status of an ethical norm is the idea of treating all citizens as equals in terms of their political positions, with Rorty following Rawls in claiming that justice should be understood as abiding by this rule and demanding that citizens be given equal opportunities in society, especially in terms of education.
The ethic of sensibility that he creates appeals to the idea of justice but Rorty, unlike Nussbaum, subordinates individualistic ethics, which she focuses upon in her considerations, to societal ethics. The goal of these ethics is to develop the sensibility of individuals to suffering and pain, the causes of which are injustice and social inequality. Sensibility has an emotional foundation and is a kind of experience, one akin to an aesthetic experience, and this is why such a considerable role is played within it by the imagination. Thus, Rorty appeals to sentiments and feelings in his ethic not only in the romantic sense but also in the same manner as the thinkers of the Scottish Enlightenment: Smith and Hume.

The imagination in Rorty’s conception, in a similar manner to that of Smith, is not only a factor shaping the sensibility toward pain but also an ability to change societal practices; the philosopher stresses the role that literature can play in achieving this task. Literature acts as a bond between the private and public spheres; thanks to the basis of community values and tradition, and by appealing to the imagination, it allows us to shape the moral sensibilities of individuals. Furthermore, the reliance upon feelings and imagination in Rorty’s ethics, as one might suppose, has its precursor in the idea of the impartial spectator, which was formulated in Smith’s Theory of Moral Sentiments. The inspiration of the British Enlightenment ethic is connected with that of Rorty by the romantic conviction of the cognitive role of literature and constitutes the original basis for a specific concept of ethical experience, one that is not just another version of American pragmatism but is supported by the tradition of European philosophy.

Rorty formulated a secular ethic, one which does not seek justification in a particular metaphysics or religion but which he wants to remove from public discourse and transfer to the sphere of private life—perhaps somewhat shutting his eyes to what is happening in the world today. Nussbaum disagrees, emphasizing the multicultural and multifaith nature of contemporary society to argue that resolving these problems will not be done by means of the elimination of religious discourse but rather through the introduction and diffusion in public life of a respect and tolerance for religious differences. However, Rorty’s ethic does not appeal to any particular conception of human nature, the existence of which the philosopher calls into question since he believes that it suffices for an individual to be aware of their belonging to the human species in order to be able to empathize and express solidarity with other people. In essence, this is a particular view of human nature but in a purely biological sense, without which these ethics would be without any justification; we are dealing here with the understanding of a moral act as an activity that helps the individual to adapt to the community and ensure its survival. Consequently, it leads Rorty to recognize morality as a kind of social practice. The concept of solidarity and the accompanying cooperation
that is fundamental in his ethical view is the result of human adaptability and finds its support in the Darwinian understanding of the human being as being guided by altruism and compassion.

Much like solidarity, justice is defined by Rorty through its usefulness for life in a community, and thus as loyalty to one’s own country, and it treats loyalty to the community closest to us as a stepping-stone toward attaining global loyalty. Recognizing justice as the conflict of loyalties between groups (e.g., family and nation, nation and humanity) or species (people and animals) is associated with the fundamental notion of solidarity in his ethics and manifests itself in the question: Should we be loyal to a group closer to us or rather to one that is more distant and broader, such as humanity or perhaps all living beings or even the whole natural world?

What Kant would describe as the resulting conflict between moral obligation and sentiment, or between reason and sentiment, is on a non-Kantian account of the matter a conflict between one set of loyalties and another set of loyalties. The idea of a universal human obligation to respect human dignity gets replaced by the idea of loyalty to a very large group: the human species. The idea that moral obligation extends beyond that species to an even larger group becomes the idea of loyalty to all those who, like ourselves, can experience pain, even the cows and kangaroos, or perhaps to all living things.18

Referring to Michael Walzer’s distinction between “thick and thin” morality19 and the narratives accompanying them, Rorty maintains that it is easy to determine moral principles with regard to a group that is close and known to ourselves, while it is harder with those further away from us—in such cases, it is necessary to appeal to the artificially constructed law that Kant regarded as an expression of a common human rationality. The position of Rorty’s ethical relativism, however, presupposes a conviction that the subject that determines moral principles is one that is a culturally defined, greater or smaller group, while the object, in accordance with utilitarianism, is the community of all feeling beings, including animals. From this perspective, he criticizes the Rawlsian theory of justice and his distinction between an objective (rational) notion and concepts of justice, which are tinged with subjectivism—he feels that these can be subsumed under Walzer’s aforementioned distinction. Similarly, he criticizes the rationalism of Habermas, charging both of these concepts—Rawls and Habermas—as expressing a position related to Western culture. He also feels that he too is bound to this culture, which is why he does not argue with the Rawlsian thesis contained in *The Law of Peoples*, and that it is necessary to expand the values of tolerance, respect for the individual, and peace that have been developed within this cultural framework. However, he believes that the diffusion of these ideas should not be on the basis of universal reason, but should rather be supported
by utilitarian arguments, because discarding the remnants of Enlightenment rationalism better serves the purpose of creating a global moral community than rationalistic postulates.20

Rorty’s argument for global economic attractiveness of the West is challenging the capability-based approaches of Sen and Nussbaum, where their criterion for assessing the institutions of collective life is whether they allow individuals to develop their capabilities through material means and furnish opportunities for them to lead a free and dignified life. The drawback to the theories of the latter is that not all of these arguments are convincing; they certainly don’t get through to religious fanatics or cultural traditionalists, since they are addressed to enlightened and educated people. Therefore, Rorty, like Nussbaum, sees no other way of introducing these values into circulation than by means of education, something that he feels should be based on literature rather than the worship of reason.21

Someone has to direct this education and select appropriate literature, and thus we must return to the Kantian idea of the enlightenment as the growth of universal education and the raising of rational individuals. On what other basis could we reject the content given by the education system of a totalitarian state, one that argues that it is better to live in a despotic system within an ethnically homogeneous state than in a liberal, pluralistic democracy? The disadvantage of Rorty’s concept is that we do not really know why Western culture is better, except that it is “ours.” On the other hand, both Nussbaum and Sen give an important, decisive argument, namely that the goals of this culture are freedom, human rights, and the development of human capabilities, rather than the diffusion of a global moral community.

Sen, who questions the existence of values that are only typical of the Western cultural milieu, ultimately also shares the conviction of Nussbaum and Rorty concerning the need for a cosmopolitan education, but not one that relies on cultivating a universal moral sensibility, rather one that enables individuals to make rational choices regarding their own lives; Sen’s theory of justice is based primarily on the rationality and freedom of individuals and on their capability to rationally shape the world around them.

Without underestimating the rational side of human nature, in many places in her work and especially in the book Political Emotions, Nussbaum focuses her analysis on feelings and their role in political life. This analysis also extends to animals since, although in her opinion there is a perception that animals are not rational beings in terms of having the capability to judge and think abstractly, there is no doubt that they are characterized by emotional capabilities that are similar to those of humans. Rousseau contributed to the dissemination of this view to which Nussbaum relies, adding an argument based on the theory of evolution that refers to species kinship that they are our distant cousins. In her latest works, she
Human Dignity, Animal Rights, and the Problem of Exclusion

moves away from the political concept of a person accepted by Rawls’ and refers more to the empirical assumptions of her theory of justice: the list of basic human capabilities and specific examples taken from real life. In this, she imitates the intention of Rawls that guided him in writing *Political Liberalism* and attempts to bring her theory of justice closer to the realities of modern society so that it can be applied within it and might influence its future shape.

In Nussbaum’s view, this real man is not so very different from his evolutionary animal ancestors, from whom he is distinguished by the capability of abstract thought, to make impartial, rational judgments, while in terms of our feelings, he is only slightly different to them. She emphasizes that there is currently a consensus between philosophers and psychologists on how to understand emotions, both those felt by humans and animals:

> This consensus includes the idea that almost all emotions (in both humans and other animals) involve some sort of information processing about the animal’s well-being. Even non-linguistic animals have thoughts, in some form, of what’s good and bad for them, and these thoughts are incorporated into their emotions. Thus, emotions are not like mindless jolts of energy: they focus outward on the world and appraise objects and events in the world. Typically, they register our animal vulnerability, our dependence on and attachment to things outside ourselves that we do not fully control.

At the same time, she notes that if children, who do not have higher intellectual abilities, acquire them by means of the education process, it is also possible to shape their emotions. Romantic literature and contemporary poetry are excellent educational tools, since they provide descriptions of human emotional capabilities that are rarely analyzed in European philosophy, while Eastern philosophy and Buddhism give them their due attention. Some of these capabilities have a political dimension—these include compassion, which, unlike empathy, is regarded as an ethical capability. Compassion in both humans and animals is an ethical value that has considerable significance for a community since it forms both family and social ties between individuals. Nussbaum supplies numerous examples to illustrate that this is a universal capability, one shared by humans regardless of race, culture, or historical period; it is the common heritage of humans and animals, one that they possess to an equal extent.

In his work, Sen had already identified compassion as a crucial element of human nature when he criticized the widespread but simplified view of man as *homo oeconomicus*, but he did not consider this in relation to the issue of justice with respect to animals. Nussbaum, in turn, uses this capability as the basis for her thesis concerning the affinity between humans and animals, postulating that they should both be treated as essences possessing dignity. She
provides numerous examples from scientific experiments and observations on animal behavior, which are meant to justify the thesis that these entities should be included and considered by the principles of justice, allowing them the attain their capabilities to the fullest extent, just as we do with humans. Nussbaum, much like Rorty, believes in the power of education and her work is aimed at arousing the interest of civilized societies, awakening moral sensibilities within them, which should then translate into legislation that protects the dignity of animals. This postulate certainly seems justified, although she devotes too little space in her writings to concrete legal issues and the problems associated with their implementation.

She then moves onto the world of human collective emotions, primarily those that are political, which may have a positive or a negative character. To the group of positive emotions Nussbaum ascribes patriotism, which she moves from the nineteenth-century conception of a love of one’s own country and nation to one that encompasses the whole of humanity. At this point, it can be added that this was the nature of Polish patriotism, which played a positive role in the unification of the nation during the partitions. The American thinker gives the modern patriotism of Gandhi as a model, in which the love of the nation was connected with cosmopolitanism and respect for the principles of equality and justice, and lists other forms of “patriotic feeling” in the literature and philosophical traditions of the world. In her opinion, collective emotions can also play a negative role in social life, and hatred, aggression, or envy used in political struggles can lead to the destruction of community life.

In The Monarchy of Fear, she analyzes the growing emotions of fear, anger, and disgust in European and American societies, noting that they produce strict divisions that lead to the destruction of community life. They need to be counteracted by means of fostering positive emotions such as hope and religious faith through protests and spreading a vision of a just society. The message in both this and other earlier works by Nussbaum is to draw attention to the issues of ethics and political life that have thus far been overlooked in liberal philosophy, and to lead to the creation of a normative program, thus postulating an education that promotes moral sensibility and the capability to accept others. Thanks to these methods, the negative impact of feelings on politics decreases and, according to Nussbaum, emotions can be shaped in a conscious way, which also applies to Kant’s concept of radical evil, the impact of which is weakened thanks to political and educational efforts.

The problem of how to include animals within the remit of the interests of theoreticians of justice, as well as the recognition of the equality of the rights of the mentally disabled, can be justified on the grounds of either philosophical anthropology or a sociological approach, in which both categories can
be described as groups affected by various types of exclusion. Both types of arguments are found in the works of the American philosopher.

**HUMAN CAPABILITIES AND EXCLUSION**

In her reflections on the cultural and religious diversity of contemporary societies, something which is a cause of conflict, Nussbaum proposes as a means of overcoming them an education that instills the idea of the equal treatment of people with different views and a respect for their differences. 31 She realizes that the existing state of affairs is far from ideal and, for the time being, equality in most countries functions in politics merely as a postulate; even in economically developed countries, there is the phenomenon of exclusion, one that social policy has the task of tackling.

We’d predict, then, that democratic citizens would need both good social norms and good laws to shore up equal respect—and that even when those are present, defection would all too easily take place in times of stress or uncertainty. Our society (like most) has an ugly history of exclusion based on race, gender, sexual orientation, disability, age, and religion. In our current political moment, demands for equality and dignity by previously excluded groups are met, distressingly often, by hate propaganda and even hate crimes. 32

All manifestations of political and social exclusion are in conflict with the fundamental values on which liberal theories of justice are based—equality and freedom—but equality above all, since violations of this principle leads to the unequal treatment of individuals who are pursuing a particular norm. This affects disabled people above all since, as Nussbaum notes, if it is true to a certain extent that a physical disability is no longer an obstacle in the implementation of the specific capabilities of those affected by it, since in most developed societies they can count on facilities that improve their functioning, this situation is very different in the case of mentally handicapped people. In this respect, there are still discussions and very little consensus in political philosophy and ethics as to who can be accorded the right to participate in public life. Nussbaum presents an egalitarian position on this matter and is in favor of granting them (either directly or through guardians) the right not only to vote but also the right to a wider participation in public life, for example as jurors. She believes that they have particular talents and perceive the world in their own way, and therefore have the right to demand participation in collective life.

One of the examples she provides describing the situation of mentally handicapped people is that of Jamie. He has Down syndrome and, thanks
to therapy and the care of his parents, functions in a similar manner to his peers, and he should thus be allowed to participate in political and social life on equal terms. This thesis is advanced by the father of Jamie, the literary critic Michael Bérubé, who believes that the right to vote could be granted to people such as his son, but he would not be able to adjudicate on a criminal case because he lacks particular capabilities. Unlike Nussbaum, Jamie’s father argues that adjudication on the guilt or innocence of a criminal is not about having emotional capabilities, which his son has, but rather requires imagination and the ability to understand and issue impartial judgments, which people like his son do not have. This argument, taken from the direct experience of many years and the observation of a disabled child by his father, is of great importance, as it proves that not all of the postulates derived from Nussbaum’s capability-based theory of justice may be proven. Their validity is a matter of discussion, one in which both theoretical arguments and empirical reasons must be taken into account.

Almost all of the theories of justice created within the framework of liberalism in recent decades emphasize the maximization of liberty and the equality of citizens living in liberal democratic countries, while the differences between them rely on their various definitions of these values, a crucial factor in the context of the rights of those with disabilities. Thus, even if there are similarities between Nussbaum’s conception and that of Walzer—since both criticize Rawls’ theory and ascribe equal voting rights and political equivalence for people affected by various forms of social exclusion in the field of poverty, suitable work, or education—these philosophers have a different position in relation to people with disabilities.

Nussbaum, in accordance with liberal cosmopolitanism, recognizes the universality of human nature, which means giving people with disabilities freedom, even when it is based on activities that harm them; however, Walzer expresses the communitarian view that the scope of these freedoms is established within the cultural and historical framework of the functioning of a given community. As noted by Bérubé, the problem in this case is not solely that of awarding freedom and equality to all citizens but rather the rightness of their claims, taking into account which areas of life someone values more highly and why. This latter factor is tackled to a greater extent in the work of Sen than in the concept of Nussbaum.

“Exclusion” is a broad and capacious term; it is usually identified with poverty, yet the relationship between the two is very tenuous: poverty is often a cause of exclusion but the opposite sometimes occurs—exclusion leads to poverty. Numerous examples of exclusion have been analyzed in economics, sociology, psychology, cultural studies, and political philosophy, where they are described in the capability approach as a lack of opportunity to realize the capabilities possessed by an individual and to achieve their correct functioning in life.
The concept of exclusion appeared in the early 1970s in connection with the global discussion on social inequalities that began at that time. This discussion was joined by Sen, who criticized in his work *Equality of What?* previous studies of social inequalities, particularly the methods used to quantify or measure the level of poverty and the degree of exclusion. This critique was based on the argument of the diversity and uniqueness of human beings and encompassed Rawls’ theory, utilitarianism, and other economic theories in which the poverty line was determined on the basis of income.

The theory of justice created by Sen highlights not only the relationship between exclusion and poverty but also between exclusion and an individual’s freedom, together with what measures the state and nongovernmental organizations should take to counteract this phenomenon. As mentioned previously, there is a clear consensus that quantitative measures (such as income) do not permit the proper assessment of poverty or exclusion, and in Sen’s latest work, there is a postulate that calls on economics and political philosophy to focus on quality of life, assuming that the basic goods necessary for life are already provided in a given country.

A subsequent problem arises: How are we to measure the quality of life of individuals given that, as Sen assumes, they are unique, individualized beings who possess different needs? Is this at all possible in economics, given that it uses quantitative methods? Many economists still believe that the only measure of living standards is income per capita; others, like Hilary Putnam, think that economics today needs to be more closely connected with ethics.

Sen postulates that, when determining the life situation of an individual, we need to examine their functioning and how they are able to utilize their capabilities for their own benefit. For Sen, the problem of capabilities becomes the main criterion for examining quality of life, which it proposes as the replacement for the quantitative measures used to date, such as the income per capita of a given country. He does not call for their total rejection but rather their complementation, and thus there is a need to determine whether an individual living in a given country is able to realize her capabilities and whether she could attain more if conditions were otherwise. The capability approach thus becomes a tool to address the problems of poverty and exclusion in their various forms in the research undertaken jointly by Sen and Nussbaum, as well as in the work of their continuators, such as Elizabeth Anderson.

A problem arises, however, when we try to apply these approaches in practice and to determine the principles of the just distribution of goods in society or—on the international level—to the creation of aid programs for developing countries on the basis of capabilities. Sen devises a criterion that requires the level of education and access to health care be taken into account in addition to income, while Nussbaum has compiled a broader list of basic human capabilities. However, regardless of the measures adopted and their applicability, they overlook the currently increasing process of social stratification. It is
increasingly clear that this danger rests on the fact that, with the enrichment of a given state, inequalities increase, meaning that the increasing prosperity does not translate into the improvement of the living conditions of the poorest but primarily serves wealthy people. This is the case in Poland, for example, where research conducted in recent years has shown that a very high level of income diversification between rich and poor has developed, indicating a flaw in the system of redistribution since it does not significantly improve the lives of poor people.

The Rawlsian theory of justice calls for such negative phenomena to be counteracted, and in liberal societies this leads, as with Sen’s capability-based approach, to political actions and the principles of fair distribution being implemented. At the same time, Sen believes that the problem of inequality and economic exclusion can be solved by the political mechanisms of a democratic state, one in which there should be a debate on the principles of the division of national income between particular groups, with the findings being applied by those in power. He does not focus solely on material issues and income per head but argues that we can counter exclusion by means other than increasing income by creating conditions for individuals to fulfill their capabilities. Access to free health care and undergoing effective treatment allows a sick person to start work and improve their quality of life; thus, when determining to whom we should ascribe financial means, we should not divide them equally but take into account how they will improve the lives of individual people and social groups.

Both Sen and Nussbaum draw attention in their works to the social exclusion of women, something that is sometimes associated with poverty and economic issues but often has a cultural background. Nussbaum conducted research on the situation of women in India, and in many of her works, she highlighted the cultural and moral barriers in place all over the world which prevent women from realizing their capabilities.40

At this point, one might highlight another, more recent form of exclusion: the lack of computer literacy, which is frequently associated with poverty, and a lack of access to the Internet.41 This online exclusion is seen as a barrier to an individual’s capability to improve their quality of life as well as an obstacle to finding work. It also primarily affects the elderly, an already weak group suffering from diverse forms of exclusion in most societies in the world. Nussbaum, in her joint work with Saul Levmore entitled Aging Thoughtfully, analyzes particular cases of exclusion that are associated with ageing. She emphasizes that her capabilities approach contains indications as to how they may be counteracted and which would help to create a better society: “The capabilities approach (CA), in my version, proposes basic political principles that could be protected as constitutional rights or secured by legislation.”42 Complementing these considerations is a similar postulate
in the work of Sen, namely that in such studies, we should not only pay attention to the relationship between exclusion and the social limitations of individual freedom but also to what measures should be taken by the state and nongovernmental organizations to counteract it.

The fact that Nussbaum makes the dignity of the human being the central category of her theory of justice does not contradict Sen’s emphasis on the value of human freedom in the categories of human capabilities. The capability approach presented in the work of both philosophers is an attempt to provide criteria for assessing the quality of life of individuals and consists of judging whether a person has sufficient resources to pursue their capabilities. Both of them try to reflect on justice in political practice and indicate methods for its implementation in a democratic society; Nussbaum emphasizes education in the moral and emotional dimension, whereas Sen pays attention to the material basis of existence to possess the means necessary for human initiative to be released. The lack of these means or their unjust distribution between social groups makes it impossible for individuals to attain material comfort in life and, in a broader sense, degrades them as human beings. Thus, although the capability approach in the concepts of both Nussbaum and Sen focuses on individual creativity, the role of the state and nongovernmental organizations is equally important in skillfully supporting this creativity, and the institutions existing in a democratic state should fuel the initiative of individuals, permitting them to change their economic and social environments for the better.
Part III

FREEDOM, JUSTICE, AND THE LIBERAL STATE
The problem of the human individual, one that thinks and acts in a free manner, has been considered as a major subject in modern philosophy since its inception. The most prominent philosophers of this period—Descartes, Locke, and Kant—analyzed humans within the contexts of metaphysics, epistemology, and ethics. This issue was also taken up by liberal political philosophy, in which both political and economic liberties became its starting point. In this conception, the relationship between the individual and the state is of crucial importance, especially the question of obligation toward its authority. However, the state is no longer considered to be a natural entity but a human creation that requires justification as it limits the liberty of citizens. Consequently, an important question of liberal political theory is how political authority can be justified, and social contract theory, as developed by Thomas Hobbes, is utilized. This theory was already known in antiquity despite not playing a significant role in this tradition. It was only the Enlightenment that recognized the explanatory value of such a contract, and various versions of it were analyzed by numerous philosophers of the era. In our time, it has been adopted by Rawls, who made it the basis for his theory of justice.

SOCIAL CONTRACT THEORY: BY WHO AND FOR WHOM IS IT MADE?

The social contract theory that was reformulated and renewed by Rawls has found numerous adherents and has been taken up by many contemporary
liberal thinkers. Not all of the representatives of this trend accept it, however, and among the critical arguments levelled against contractarianism is that of Nussbaum, who claims that of crucial importance to this theory is by who and for whom this contract is made since the one who makes the choice has an influence on what rules and institutions are chosen.1

Rawls sought to construct a theoretical model of a just state in his political philosophy that every citizen would accept. Therefore, he introduced in his *A Theory of Justice* the notion of parties to a hypothetical contract who (later termed representatives in *Political Liberalism*) were not real people but rather the constructs necessary to build the theory. This ensured impartiality in the choice of the rules on which the state would be based.2

Other strands of liberalism are critical of the rationalist theory of Rawls or seek their starting point in a contract based on real subjects, as is the case with Buchanan’s theory of public choice. There are also those, like Sen, who reject the theory of a social contract and propose a different empirical manner to secure impartiality in the public debate, which leads individuals to agree-upon collective goals.

**INDIVIDUALISM: ONTOLOGICAL, METHODOLOGICAL, AND NORMATIVE**

In both the political philosophy of Sen, as well as in the theories of public and social choice, the fundamental premise is that the choosing individual has their own system of values, and collective choice must take these into account. These conceptions assume individualism in both an ontological and methodological form, as well as having a normative character. Therefore, a significant theoretical problem arises: clarifying the transition from individual to collective choices.3

This problem has become a matter of reflection in the liberal thought of the twentieth century in the theories of collective choice that have been formulated. One of the earliest, in the middle of the century, was undertaken by Arrow on the basis of his theory of social choice. It analyzed the fundamental problem for a democratic state: How can the decisions of individuals be incorporated in a collective choice by applying the majority rule? The result of this research, which had been aimed at constructing the welfare function, was negative; it showed that the application of democratic procedures did not always lead to clear conclusions and the identification of decisions that would be accepted by the majority of citizens.4 In the theory of public choice, however, a particular solution to this problem was proposed by Buchanan, one that called for the reduction of collective decisions to individual choices and for adopting the unanimity rule as a criterion for the justification of
This proposal also had its disadvantages, as indicated by the difficulty of attaining universal agreement in social life and the high costs of applying the referendum method. It was only with Sen and his capabilities approach that a new research perspective opened, which permitted the accommodation of the individual values in collective choices and which could be applied in the social policy of a democratic state.

**NOZICK’S CRITIQUE OF THE POSITION OF SEN**

At the beginning of his academic career, Sen collaborated with both Arrow and Rawls at Harvard University. Nozick, who also taught at this university, in his book *Anarchy, State and Utopia* presented his line of argumentation that was meant to undermine the Rawlsian theory of justice, presenting a libertarian conception instead, which was to form the basis for a minimal state. In this work, he introduced the term *entitlements* as a basis for the entitlement theory, which he outlined in the book and which essentially functioned as a theory of justice.

In the chapter entitled *Distributive Justice*, Nozick presented his attack on the theory of fair distribution proposed by Rawls, together with its related conceptions, which he termed ahistorical and patterned. Having defined entitlement theory and the principles of distribution, which he regarded as historical and not patterned, he demonstrated that any variety of the principles of justice that were based on some pattern could not be sustained in a given society over a long period of time since they would be thwarted by the voluntary actions of individuals. Finally, the state interference necessary to maintain the pattern would infringe upon the rights of individuals.

The essence of this argument is to demonstrate that any reference to a patterned principle of the division of goods produced in society leads to a violation of the fundamental rights of the individual by the state—of freedom and of property—since the state must interfere in the field of what the individual possesses, taking and transmitting a certain good to others and thus violating their freedom. This charge also applied to the concept of the fair distribution of Sen, as outlined in his book *Collective Choice and Social Welfare*. Nozick reconstructs the argument presented in it, which is a modification and reinforcement of the aforementioned *impossibility theorem* of Arrow, the argument claiming the impossibility of the democratic choice of collective objectives in the premises adopted by the theory of social choice.

This argument runs as follows: suppose that individual rights are interpreted as the right to choose an alternative that is more highly valued in a societal ranking, but if one is unanimously preferred, it should be placed higher in the ranking. If we consider two individuals, A and B, having constitutional collective choice. This proposal also had its disadvantages, as indicated by the difficulty of attaining universal agreement in social life and the high costs of applying the referendum method. It was only with Sen and his capabilities approach that a new research perspective opened, which permitted the accommodation of the individual values in collective choices and which could be applied in the social policy of a democratic state.
individual rights and choosing from among the pairs of alternatives: A (X, Y) and B (W, Z), then for some possible preference rankings of the alternatives by these individuals, it is impossible to designate the social choice in a linear manner. Suppose the preferences of these individuals are as follows: A: X > Y and B: Z > W, taking into account other social preferences, the successive selections undertaken by these individuals can be presented as A: W > X > Y > Z and B: Y > Z > W > X; as a result, we receive a collective arrangement of preferences W > X > Y > Z, which, however, is in conflict with the preferences of one of the selecting people (B).

In his reading of the reasoning of Sen, Nozick observes that the problem is in this case the treatment of the individual right of choice as the right to determine the relative arrangement of the options within the social arrangement.10 The whole situation is already programmed and, essentially, the individual does not express their preference but merely decides within the framework of the rule set or within a certain pattern. Thus, Sen’s attempt to modify the theory of social choice and bring about a democratic mechanism respecting the rights of the individual in collective social ordering is not effective; on the contrary, it only strengthens the way of thinking about fair distribution as a situation referring to a pattern and Nozick’s arguments against such systems also apply to it. It can be assumed that these criticisms led Sen to reflect upon, and subsequently abandon, his former version of the theory of social choice and to create a new theory, one that was not based on entitlements but rather on capabilities.

THE PROBLEM OF THE CHOICE OF CONSTRAINTS

The significance of this argument, however, is far more significant and goes beyond the mathematical difficulties of applying the majority rule. Nozick, summarizing the efforts of Sen and the whole trend of social choice in a brief commentary, claims that the analyses conducted within its framework would have sense were the individual able to choose the alternative goods themselves, rather than select from a framework affording them a set of defined alternatives. He supplies the following example: the individual has to choose between the pair of X and Z and prefers X > Z, but would actually favor the choice A > B, but no one has proposed such an alternative. Someone might choose to live in one of the districts of New York, while in actual fact, they would rather choose between living in New York and Boston, as they would like to live in the latter. The conclusion is clear: when individuals are free to choose the alternatives themselves, and not just from among predetermined options, and when they can set the constraints rather than having them set for them, the analysis of their choices would make sense since then it genuinely
takes into account the freedom of the individual.\textsuperscript{11} Thus, another question arises: Is the choice of constraints possible?

This question has had far-reaching consequences and inspired many philosophers, including Nozick and Sen, to further investigations.\textsuperscript{12} Nozick was to the fore in exploiting his own notion, presenting a utopia at the end of his book in the form of a model of a perfect state, which accounted for individual choices. The question of what the world would look like if individuals were free to choose the state in which they lived and select the alternatives that were to limit them was to find its expression in the model of the minimal state presented by Nozick—an equivalent to the free-market state that had previously been captured in a descriptive manner in the pages of his book. He was accused of lacking a certain consistency with no real connection between free-market capitalism and his utopian model, but this accusation was not valid. This relationship can be discerned in Nozick’s conception, but it does not consist of moving from empirical data to a general model since this model is precisely the answer to the question about the state in which individuals choose alternatives and set constraints. At the same time, Nozick does not care about empirical data and considers the problem of the possible state respecting the freedom of the individual as a logical problem. Most similar to this model in empirical reality is the minimal state, previously described by him as a capitalist state with a free-market economy, maintaining legitimate, just distribution. Nozick intertwines deduction in political philosophy with empiricism, and the basis of this philosophy is an extremely individualistic anthropology: the free individual with certain inviolable rights.

The inspiring force of the question about the individual’s choice of constraints for their own actions and future choices is also visible in the political philosophy of Buchanan, who took issue with Arrow’s conceptions and never attempted to determine the social welfare function. This was because, as he wrote, even if it could be done then it would threaten the freedom of individuals since if the goal was to meet the expectations of the majority in every socially important collective decision, it would lead to a system known as the tyranny of the majority.\textsuperscript{13} From the point of view of individual freedom, understood as freedom of choice and freedom of action, this solution would be unacceptable. However, the very question about the possibility of choosing the constraints for our actions appears earlier within public choice theory,\textsuperscript{14} in which the solution to this dilemma of the enduring dominance of the majority is to be found through the principle of Pareto’s optimality and the rule of unanimity. According to this concept, the choice of restrictions for individual actions is a unanimous collective choice, a choice of rules to be in force in the state that will limit our future behavior. These fundamental rules, termed constitutional choices, establish a framework for later choices made in the field of existing restrictions.\textsuperscript{15} The rationale for constitutional choices
is unanimity which, in the opinion of public choice theorists, is possible to achieve in the situation of uncertainty that always accompanies these choices.

**THE EVOLUTION OF SEN’S POSITION**

The abovementioned commentary of Nozick certainly had an impact on Sen’s position, who accepted that the analyses conducted within the framework of social choice theory had a narrow character and could not lead to valuable conclusions. In his works, he revealed the faulty theoretical assumptions of Arrow—the reductionist *homo oeconomicus* conception of man and the too thin information base afforded to the individual in the impossibility theorem, which led him to reject this theory because of its rationalistic and detached-from-reality character. Moving closer to the theory of public choice, he emphasized the empirical basis of this theory, while at the same time acknowledging its theoretical flaws that lay in its lack of a coherent and unified system. Inspired by the libertarian notion of the choosing individual acting in a free, undetermined manner, he attempted to fuse it with the idea of social justice attained in a democratic state that had been introduced to liberal philosophy by Rawls. Yet, following Nozick’s critique, the pursuit of just distribution in the conceptual apparatus afforded by social choice was redundant.

Sen also abandoned his intention to follow Nozick’s model vision of a state, which would respect liberty in terms of rights and the entitlements of individuals. He rejected the very notion of entitlements as one that was associated with an abstract conception of freedom of choice and shifted instead to an empirical basis. He adopted the assumption that collective goals should be defined within a democratic state in which debates and discussions about the goals of collective action are conducted. However, one still requires criteria to evaluate the proposed solutions, and thus one is confronted with another problem: How do political and economic solutions and decisions affect the life and functioning of a specific individual? This empirical approach prompted Sen to base his reflections on the individual capabilities, which people have at their disposal and which they can pursue in their social life. The subject of the analysis became functioning—both current and possible: if many different perspectives are opened for an individual, if they can utilize them for their own good and achieve a good life, then the state that enables them will be a just one. The political philosophy of Sen henceforth becomes a theory built on empirical grounds, taking into account the systems of values professed by individuals. It moves from mathematical economics and the modeling of human choices to the analysis of human activities, which takes into account the capabilities possessed by
individuals and the potential for their implementation in society. There is no doubt that Nozick’s views played an inspiring role here and were adapted in an original way.

Summing up this discussion, one may venture the assertion that Nozick’s significance in contemporary political philosophy is similar to that of Kant for modern epistemology because the former, like the latter, initiated a Copernican revolution within the research perspective of the time. His work *Anarchy, State and Utopia* was an attempt to undermine the Rawlsian conception by highlighting its theoretical limitations and practical consequences, namely that it would lead to a totalitarian model of the state that limited individual freedom. The libertarian philosophy of Nozick was based on the notion of man as an autonomous being; he defended not only freedom of thought but also action, since thinking is not done in a vacuum but in a man who is an autonomous whole, an individual being. *Anarchy...* was in essence a work that highlighted the subjective conditions of action and constituted a defense of the individual against a state and society that wants to limit their autonomy. This led to outlining the concept of a minimal state, one that researchers have interpreted as an apology for free-market capitalism, while it was the author’s intention to create a model that showed the correct environment for the free-acting individual.

In this respect, the comparison with Kant presents itself: rather than taking society and the state as the entry point in terms of some kind of original position and using this to define the rights of individuals, Nozick instead questions the scope of the state in terms of the fundamental rights of the individual and how much room these rights leave for the activities of the state. He attempts to reverse the hitherto accepted manner of thinking about the state, showing that instead it is an institution that is brought to life by individuals and for their comfort, since their actions require a certain institutional frame that needs to be defined theoretically in order to limit the creative potential of individuals the least.

Much like Nozick, Sen is also convinced that the role of the state and other institutions are secondary to human rights, which are needed to enable individuals to act in accordance with their predispositions and talents. However, unlike Rawls and Nozick, he approaches human nature in an empirical way and sees the great diversity of individual beings that is expressed in the various ways in which individuals function in society. Often, however, these ways of functioning deviate from the possibilities—from what an individual could achieve (even if they do not realize it) if certain conditions were otherwise. For example, to escape from poverty—a seemingly incurable life situation—is easier when we have a bank that lends to poor people. The existence of this institution is already the creation of possibilities for action that individuals can use, but the creation of such solutions does not have to
be the domain of the state, since nongovernmental organizations or private individuals may also participate in it.

Thus, the question posed by Nozick of why we should have to choose between X and Z when we would like to choose between A and B is one that applies not only to individuals but also to the whole of society: Why would we choose a totalitarian system when we want to live in a democratic state? This is interpreted by Sen in his own manner. While Nozick, however, minimalizes the role of the institutions of the state in order to maximize individual freedom of action, Sen believes that this freedom requires certain conditions, not only subjective conditions but also ones that are political, economic, and social—conditions for functioning.

**SEN: A DUALISTIC CONCEPTION OF THE INDIVIDUAL**

In Sen’s conception, capabilities are a reflection of the human freedom to achieve valuable functioning and a happy life. Clear in this respect is the dualism between the individual and their actions in his conception since within his ethical considerations, two terms are used: (A) *agency* and (B) *well-being*. *Agency* refers to the activity of individuals that they perform on the basis of set values in order to achieve a particular goal, while *well-being* refers to the benefits enjoyed by the individual, their happiness that they are healthy, not starving, and have an education.

In the first notion, individuals are seen as actors and responsible persons while the second sees them as beneficiaries of actions or institutions that are external, such as the state. In essence, however, we are dealing here with the substantial unity of the individual, because it is about the same person. The way often recommended by Sen to attain well-being is to encourage them to take action, and as an example, he points to the difficult situation of women in many Asian countries, which dramatically improves when they have an independent income, find work outside the home, or obtain an education.

It is worth noting that the model of a welfare state critiqued by Sen is based on the conception of an individual, which is focused on the realization of their own interests; their activity leads to the attainment of prosperity or individual well-being (B). When, however, element (B) is omitted, it transpires that individual agency (A) cannot be enabled since it always depends on the freedom of the person and on whether they want to undertake an action.

In analyzing the notion of freedom, Sen considers two variants: *control freedom*, which refers to the life opportunities that solely stem from the individual’s own actions and *effective freedom*, which describes the opportunities that are created by other people, families, or the state. This distinction allows Sen to identify the role that economic, political, and social factors may
play in helping or restricting human capabilities since “persons acquire, exercise and enhance their capabilities depending on their social conditions.”

Thus, Sen, while comprehensively analyzing freedom as one of the most important values, claims that freedom is within us but also that possibilities stem from the activities of our environment, the government, and the state. Certainly, this is a field that is independent of direct human activity while it cannot, however, be overlooked in the characterization of human freedom.

**THE DUALISTIC CONCEPTION OF FREEDOM: FREEDOM IN THE PRIVATE AND SOCIAL SPHERES**

Freedom is a fundamental value in Sen’s political philosophy and economic theory, much as it is in libertarian conceptions. Nevertheless, he never fully ascribed to the libertarian vision of man or its related concept of negative freedom. Instead, like Buchanan, he regarded Isaiah Berlin’s distinction between positive and negative freedom to be outmoded. Furthermore, in Sen’s understanding, human rights are not accorded the same fundamental significance as they are in the theory of Nozick, where they obtain a status similar to that of a natural law. Instead, he treats them as something defined and realized in a given collective.

Freedom for Sen rests not solely on our own actions, upon which others do not have an influence or take part, but also on the activities that depend on others, the society, and the state but without leading to the determination of human activities by the economic and social background. While individuals always work under certain conditions, which often calls for cooperation and activities with others, the state, or nongovernmental institutions, the environment does not completely determine the freedom of individuals but only influences their scope. Sen’s conception of freedom is typified by a visible type of dualism that stems from the abovementioned dual nature of the account of human action that has both a private character and a social dimension.

Similar to Nozick, Sen accepts that freedom in the private dimension becomes the basis for actions, a condition without which individual actions could not be conceived, and thus we must accord them fundamental importance—not focusing on the rights or entitlements of individuals but rather on their “capabilities.” They become a condition for freedom to be realized; and thus it depends entirely on a person as to whether they make use of them. Even under difficult conditions or unfavorable circumstances, an individual can and should show their activeness and act in some manner or another, but this does not mean that the burden of responsibility for their correct and full utilization lies on their shoulders.
Freedom in the social dimension means that, in performing our capabilities and undertaking a certain action, we enter into a relationship with our environment. In a democratic environment this relationship not only depends on “finding ourselves in particular circumstances” since an individual can have a role in shaping their form by political means, for example, in influencing the shape of the economic rules. The individualism advanced by Sen differs from the deterministic and holistic conceptions, and he describes relationships between an individual and society as manifold and nonantagonistic; above all, they rely on the assumption of the possibility of cooperating with other people for mutual advantage.

In this context, the work of Yunus in creating a bank giving loans to poor people is an excellent example of an initiative that wins the approbation of Sen. This is because it is in accordance with his thesis that in order to develop the life opportunities and capabilities of individuals, we do not need a model of an ideal state, as Marxists would claim, but that it suffices to act on even a limited scale, stemming from the initiative of individuals. One can certainly not escape from the institutional frame completely, however, given that the individual must first have a guaranteed basic means for life and at least a minimum level of education in order to sensibly develop their capabilities. Second, they should be able to utilize the infrastructure that the given state supplies in order to exploit the new opportunities that present themselves.

Sen avoids a closer definition of these basic conditions, recognizing the diversity of contemporary societies and the differences that occur in them in terms of the standard of living of their residents; what poverty means in American society means something else entirely in Bangladesh. In his theory of justice, he assumes that it is intended for modern democratic countries where hunger is no longer present but where there are various forms of exclusion that should be counteracted. He draws attention to factors such as the health and education of citizens, which the state should take care of, while other more specific problems must be solved by the individuals themselves.

His argument against drawing up detailed lists of human capabilities, such as those presented by Nussbaum and formulated as postulates for a given state, is their general character and inability to go beyond the elementary experiential level of human existence. Meanwhile, man as an individual person needs various and differentiated goods to realize his life potential—the acquisition and appropriate use of which is a matter of their own initiative, and thus freedom.

This distinguishes this conception not only from socialist thought but also from public choice theory, in which the conditions of acting are set by the constitutional choices, since Sen’s preferred system is that of a deliberative democracy. Within this framework the confrontation between individual systems of values takes place, as does agreement on the hierarchy of tasks to be undertaken at the level of the state.
THE SIGNIFICANCE OF SEN’S THEORY IN CONTEMPORARY LIBERAL POLITICAL PHILOSOPHY AND ECONOMICS

Sen’s views are tinged by a moderate relativism, which is quite a common position in contemporary philosophy. There exist many variants of relativism and we are not usually confronted by extreme versions; this is also true in the case of Sen, and the authors of these conceptions in ethics and political philosophy usually try to show certain limitations with regard to the freedom of choice. They accept, nonetheless, that these values are somehow given to us in a positive way by culture, tradition, religion, or language and impact upon an individual, inclining them to action. Transferring their contents to collective tasks and social goals in the present “here and now” is no easy task, albeit one that Sen sees as attainable by means of democratic debate.29

His philosophy lies within the tradition of liberalism, which he enriches with the new conception of individual freedom. Freedom in this conception is not solely political freedom, as it is in the social contract tradition, nor does it lead to the freedom to undertake economic initiatives by an abstract homo oeconomicus but is something much more. The concept of freedom cannot be separated from an acting individual conceived as an individual entity and having its own system of values. Thus, he introduces an acting human individual to political philosophy and economics as the basis of a theory created within their bounds, one that has a specific system of values and unique talents. This philosophy is empirical and is closely related to the economic approach, and the deliberations on social justice undertaken as part of it are an attempt to determine the principles of fair distribution, one that takes into account the concept of the human being. In the opinion of Hilary Putnam and Vivian Walsh,30 when analyzing new trends and ways of practicing economics that includes values, Sen’s conception is the most interesting example of an economic theory today that deviates from traditional mathematical modeling and is not axiologically neutral.31 His unquestionable service has been the introduction of new elements to contemporary liberalism in terms of both economic and political discussions on the concept of social justice as an idea related to the freedom of the individual and the gradual progress of human civilization.
Chapter 10

The Liberal Conception of Man

The ideas of liberalism have been discernable in European culture for the last few hundred years, even though the concept itself only arose at the beginning of the nineteenth century and since then, numerous competing branches of this position have arisen. The broadest and most capacious definition depicts liberalism as a philosophy of freedom, and it is primarily about political freedom that the individual secures for themselves within a state. In each definition, one can also find a mention of individualism, a concept that assumes the primacy of individuals over the state, which is understood as their creation, and this leads to the social contract theory often adopted in different branches of this school of thought. Individualism is accompanied by rationalism, most frequently understood as a practical rationality.

Liberalism thus defined is a branch of political philosophy that focuses on the theory of the state rather than on anthropological issues; nevertheless, various forms of liberal doctrine contain a particular conception of the individual as one who lives in a state and is endowed with rights. The relationship between the individual and the state does not have an antinomian character but is conceived in terms of rationally justified agreements and cooperation. When attempting to determine the most basic features of human nature as described in liberal philosophy, it must be remembered that by nature, one understands not only the biological or psychological properties of man but, in accordance with the Kantian approach, their essential features.

The reconstruction of the concept of liberal man presented here will refer to the ideas contained in the works of prominent representatives of modern liberalism and, above all, to the political theory of Rawls and the philosophers from within his sphere of influence. A problem that arises in connection with the consideration of human nature in a liberal approach is both methodological and ontological. It can be phrased in the following manner: Does the
description of a liberal man have its counterpart in the real world? In other words, do these sets of essential features describe individuals as they are in reality or, by contrast, is the concept of man they present only a theoretical construct, a useful concept for building complex models of social life or different varieties of the state?

RAWLS ON THE POLITICAL PHILOSOPHY OF HOBBES

Let us begin our examination with the conception of man, which arose at the dawn of the Modern era and, above all, in the philosophy of Thomas Hobbes and his vision of human nature. Many philosophers in the liberal tradition have made reference to the political philosophy of Hobbes and they typically made use of his theory of the social contract, as considered in light of rational choice or game theory. Despite these numerous interpretations, perhaps the most interesting is that of John Rawls, as outlined in his lectures on the history of political philosophy where he took the Hobbesian concept of human nature and made an interpretation of it, which became the basis for his own concept of man. He thus overlooks the biological-naturalistic aspects of the English philosopher’s conception, emphasizing the rationalistic elements instead.

He delivered these lectures at Harvard University from the 1960s until his retirement in 1995. They have been reconstructed on the basis of the notes of Rawls himself, those of students and recordings made by his assistant and editor, Samuel Freeman. In 1983, Freeman recorded a lecture about Hobbes, and the transcript of this recording, along with a short written summary that Rawls gave to students after each lecture, was included in a volume published after the death of the philosopher.²

Rawls identified four features of human nature that are presented by Hobbes.³ The first of these is the equality of humans in natural endowments, like bodily strength or mental capabilities, which Hobbes does not mean in the literal sense but rather as equal enough. The second feature or element of human nature rests on the fact that when people find themselves in situations of scarcity in terms of natural resources, they turn to competition between themselves in order to deal with this fact; as Rawls puts it, the nature of our needs leads to competition. A lack of resources leads to competition between people; the existence of a society or a state does not change the fact that there are not enough resources to meet the needs of all people, even though their institutions ameliorate this competition and bring about the rational division of the resources. The third feature of human nature, according to Rawls, can be deduced from the psychological observation that every human being is focused on themselves. When people discuss collective priorities, everyone
has their own experience and security in mind. In the *Leviathan*, Hobbes claims that we have the ability to act for our own good. He does not deny that we have other abilities, but he minimizes their role by introducing the sovereign, who guarantees peace and control over human actions that are taken from selfish, egotistic motives. In other words, the English philosopher bases his political vision on a preconception of the interest of individuals. Without questioning the existence of more noble qualities and abilities in humans, he claims that we cannot rely on them to ensure unity in society, to merge individuals into one body—the state that is symbolized by Leviathan. Thus, the description of human nature that emphasizes the individual’s tendency for self-preservation and self-interest serves the purpose of justifying the necessity of the strong authority enjoyed by the sovereign in Hobbes’ political conception, one that is necessary to ensure agreement and peace.

From the fact that it must be assumed that all people strive to secure their own good and preserve their lives, the drawing of normative conclusions is inevitable for the legislator. Since the state of nature resembles a war, it is inefficient, so the only rational way out of this situation is a state in which power is personified in the sovereign. Hobbes considers him to be an “artificial person,” someone whom members of society authorized to act on their behalf.4

For Rawls, the Hobbesian assumptions of human nature as he reconstructs them need not be real nor precisely describe the reality of human behavior. For example, the egotistical or psychological egotism hypothesis does not mean than man is always egotistical. Rawls believes that these Hobbesian features significantly shape human behavior in the initial situation, which the philosopher describes, and which becomes the starting point for his considerations of the state. Furthermore, the conception of secular morality is inseparable from his political doctrine. Next, Rawls ascribes a practical rationality to the Hobbesian man, thanks to which, he is able to move from the state of nature to the creation of the state. This is thus the fourth feature of human nature in the philosophy of Hobbes. For Rawls, this practical rationality may represent both rationality *sensu stricto* (Hobbes), the rational debate over what is theoretically effective and what is rational, as well as the reasoning (Locke) that is based on agreements, understandings, and reciprocal concessions.

The Rawlsian interpretation of the Hobbesian approach to human nature leads us to one of the most important issues in the political philosophy of Rawls himself, namely to his concept of man that he refers to as a person or an individual. In the above interpretation, Rawls reads Hobbes through the prism of his own thoughts. He claims that Hobbes does not describe man and his nature empirically, but he chooses and emphasizes those qualities that he requires in order to construct a political theory and concept of a state.
that in his opinion is the best in the current situation—an absolutist model. Rawls proceeds in a similar manner, building the political concept of a person because he needs to create a vision of a man that will allow him to justify the model of a well-ordered, just society and state. However, in the philosophy of Rawls, unlike Hobbes, this model is a constitutional liberal democracy. According to the American philosopher, the purpose of these lectures in modern philosophy is to define the main features of liberalism as a position expressing the political concept of justice, where liberalism is embraced within the tradition of democratic constitutionalism.

If we look at other modern political theories in the manner proposed by Rawls, as concepts in which anthropological assumptions serve to construct a model of a well-organized state, this method requires certain empirical concessions in relation to the philosophy of both Locke and Spinoza. Furthermore, the Rawlsian model of the state—constitutional liberal democracy—is derived from the concept of Locke, who is contrasted with Hobbes as he describes human nature in a different manner.

In the political philosophy of Locke, individuals are not to be separated from their society and religious context. They are also subordinated to the laws of nature that were determined by God and crucial to human nature is that they need other people to survive. Moreover, self-property, inherent in human nature, leads to Locke’s concept of ownership and to a political system in which the natural rights, including the right to private property, are its basis. This right was wrongly interpreted as a manifestation of possessive individualism that justifies an extreme form of the capitalist state, but researchers currently most frequently embrace Locke’s theory of property in the spirit of moderate liberalism, according to which, he creates the concept of a democratic state where the constitutional government must agree to abide by the laws of nature. And although the ideas of liberalism and democracy can also be derived from the anthropological assumptions adopted by Hobbes, the Rawlsian position on the state is similar to that of Locke’s, with the difference being that the basis for the assessment of the system in Rawls is that political power should respect human rights rather than natural laws.

The fundamental difference between the concepts of Rawls and these modern philosophers is that the Rawlsian entity is collective and constitutes a representation of a certain group of people. If one gets the impression from reading the works of Hobbes or Locke that they characterize human nature in an empirical way and describe real individuals, then the Rawlsian conception reveals a different approach: Individuals as moral persons are rational beings and also representatives of groups in a purely hypothetical original position, corresponding to the state of nature. Although other empirical and descriptive views of man appear in Rawls’ writings as a citizen in a system of social cooperation or as an individual endowed with natural traits and capabilities,
the notion of an individual as a rational construct allows the transition from the individual level to the structure of a just state. The individual thus conceived as a party is necessary to conclude a collective agreement concerning the principles of social justice and the constitution of the state on the basis of equality.

**THE INDIVIDUAL IN THE PHILOSOPHY OF SPINOZA AND THE CONCEPT OF ECONOMIC MAN**

When considering other modern concepts, mention must be made of the political philosophy of Baruch Spinoza. By no means merely a follower of Hobbes, which he has often been considered, his political theory has been the inspiration for one of the main trends in contemporary liberalism—the theory of public choice. Like Hobbes, Spinoza delineates the presence of the four features of human nature distinguished by the English philosopher, but he ascribes not so much the ability for man to reason rationally, as Hobbes does, but rather a practical ability in which the aspects of rationality and reason combine in the concept of a man carefully calculating his happiness, contentment, and well-being.

The role of passions is unclear in Spinoza’s early work *Tractatus de Intellectus Emendatione*, whereas in his *Ethics*, he describes passions as inadequate ideas. Although he asserts that the goods highly valued by ordinary people (honors, money, sensual pleasures) are flawed, and that a life devoted to acquiring knowledge is worth living, at the same time, he appreciates these inadequate ideas as enabling people to show benevolence to others. ⁸

In *Theologico-Political Treatise*, Spinoza asserts that the best model of a political regime is democracy, a state in which people live well in accordance with how they understand the good. Thus, good is something useful to us and can be discerned under the guidance of reason, which means that an ideal man is guided by reason to the greatest extent. Reason, however, provides rules for action that are too general to be useful in the empirical world and they therefore have to be combined with imagination and passions. Furthermore, “good” does not mean that we desire things because they are good, but we term things good because we desire them (Chapter XVI). ⁹ Moreover, in *Ethics* he writes that “the good which everyone who seeks virtue wants for himself, he also desires for other men.” ¹⁰ This means that rational persons are beneficial to other people as they, pursuing their own interest, are most useful to others. ¹¹ As a consequence, egoism leads to common benefit.

Here we come to the concept of an economic man, the seeds of which we find in the writings of the aforementioned modern philosophers and which Smith then developed in his work *On the Wealth of Nations*, although the
concept of *homo oeconomicus* itself appeared in the theories of John Stuart Mill and Max Weber. Thanks to the Austrian school, this idea together with the concept of rationality connected with it became the foundation of modern economic theories and the theory of rational choice. The concept of a man who is focused on pursuing self-interest is adopted, which Mill terms utility and thus the attitude of maximizing self-utility characterizes both the aforementioned vision of the individual and rational action. In light of this vision of man, as in the case with Rawls’ concept, there was also the objection that it does not fully reflect human nature but contains a fragmentary and unrepresentative image of the individual. Advocates of this concept, however, referred to its usefulness because it allows models to be created in economics and in political philosophy, which are based on theories of rational action. The dispute regarding this issue has been ongoing for many years within social sciences, and more recently, it has moved to economic psychology, but in the context of liberalism, this concept is still in use. At most, some of its critics, like Sen, have postulated the enrichment of the economic vision of man, which is focused on the pursuit of his own good, with elements of obligation and responsibility.¹²

The conception of *homo oeconomicus*, upon which the rationalist branch of contemporary economics and political philosophy is based, was introduced by means of the notion of human nature contained in the writings of Spinoza and Hobbes. However, the problem that appears in the Rawlsian interpretation of Hobbes is not simply of a methodological nature as it does not only concern the validity of this interpretation in the history of philosophy. In essence, Rawls, when attempting to interpret Hobbes, reveals the theoretical basis of his own philosophy, specifically his political concept of a person.

Liberalism frequently adopts the stance that the conception of a person, together with their rights, is framed as part of the social contract and remains in a relationship with the authority of the state. If we accept that a state can and should limit the liberty of people for their own good (N. B. Herbert Spencer wrote that the thesis that individuals cannot maintain mutual agreements without the state is heresy, something that Hobbes persuaded later generations), then the question arises as to the extent to which a state may limit the freedom of individuals, imposing certain behaviors on them and shaping humans in accordance with the model of a political person.

**THE COMMUNITARIAN, PUBLIC CHOICE, AND THE LIBERTARIAN CRITIQUE**

Rawls’ philosophy, especially his concept of the person, was the subject of criticism on the part of communitarians, who stressed its artificiality that
stripped man of many essential features, and replaced an individual with a collective being. Sandel drew attention to the contradiction between the pluralism and individualism present in the Rawlsian concept of the moral subject, and between the rationalistic and empirical aspects of this anthropology. However, in response to this criticism, Rawls repeated that he never maintained that the parties agreeing to a social contract in the original position were real people, since in his view, they are rational constructs designed to justify the concept of a just society and state.

It is important to distinguish three points of view: that of the parties in the original position, that of citizens in a well ordered society, and finally, that of ourselves—of you and me who are elaborating justice as fairness and examining it as a political conception of justice.

The first two points of view belong to the conception of justice as fairness and are specified by reference to its fundamental ideas. But whereas the conceptions of a well ordered society and of citizens as free and equal might conceivably be realized in our social world, the parties as rational representatives who specify the fair terms of social cooperation by agreeing to principles of justice are simply the parts of the original position. This position is set up by you and me in working our justice as fairness, and so the nature of the parties is up to us: they are merely the artificial creatures inhabiting our device of representation. Justice as fairness is badly misunderstood if the deliberations of the parties, and the motives we attribute to them, are mistaken for an account of the moral psychology, either of actual persons or of citizens in a well ordered society. 13

The debate between the communitarians and Rawls, in large part connected with his conception of man, was a considerable factor in the reception of his philosophy, but it is also worth mentioning other critical arguments formulated from within the theory of public choice (J. M. Buchanan, A. Sen). While the Rawlsian political conception of man took freedom as its basis, 14 the theory of public choice emphasized the consequentialism characteristic of this branch of philosophy, constituting a fundamental limitation to individual choice. According to one of the representatives of this school of thought, Geoffrey Brennan, the Rawlsian political vision can be termed democratic socialism, a conception that advocates the idea of a majoritarian democracy with the universal right to vote, and at the same time, an egalitarian system working in the public interest. 15 One might discern a certain similarity between this social democratic conception with the socialism of Marx, who favored the human species over the individual, and thus preferred a certain construct that the socialist state should make actual human beings conform to. Similar consequences are to be discerned in the Rawlsian theory: the state must deal with selfish human beings by devising a political structure and institutions that will make them more civilized, and people themselves should
agree to these structures in the name of the benefits they expect to gain in the future. While in the Rawlsian concept there is a priority of freedom over other goods and values, it manifests itself at the level of the social contract, determining the general framework of the state, and its functioning may later bring regulations and laws that limit the freedom of individuals if the established procedures are met.

Rawls did not intend to analyze the metaphysical assumptions of the concept of the person, but rather described them during its construction, emphasizing freedom as the main element. Meanwhile, public choice theorists referred this concept to political practice, stating that its functioning in fact means a far-reaching limitation of individual freedom and expansion of the power of the state.\textsuperscript{16} The statist consequences of the Rawlsian theory of distributive justice were also noticed by Nozick in \textit{Anarchy, State and Utopia}; it seems, however, that they also stem from the concept of man adopted by the author of \textit{Political Liberalism}.

To date, studies have typically highlighted the similarities between Rawlsian theory and the political philosophy of Locke, Rousseau, and Kant, since Rawls refers to these philosophers in \textit{A Theory of Justice} in the context of the social contract. However, the interpretation of the Hobbesian vision of man which he presented in his lectures reveals the statist features of his own conception. Furthermore, in the Kantian political philosophy that Rawls frequently makes reference to, the influence of Hobbesian political theory is also discernable.

Assuming the concept of the parties as theoretical and rational constructs, Rawls essentially limits individual freedom, and at the same time undermines the Lockean tradition of democratic liberalism from which his own conception stems. This becomes apparent not in the light of the communitarian criticism but by comparing Rawlsian philosophy with public choice theory, whose representatives present Rawls with the accusation that his concept, by imposing particular structures of a just state on individuals, does not allow them to choose freely. In addition, they claim that Rawls, by focusing on justice and the defining of state frameworks during the social contract, leaves its future fate to collective wisdom or the democratic majority. Meanwhile, according to Buchanan and Brennan, majority rule has no basis in the social contract, and its absolutization can lead to the tyranny of the majority.\textsuperscript{17}

The authoritarian element of Rawlsian political theory is a result of its characteristic rationalism that is manifested in both his notion of the individual and the state. Rationalism is indeed a characteristic feature of modern philosophy and the social sciences, and the cause of its popularity ultimately lies in the fact that analytical philosophy dominates the Anglo-Saxon philosophical field. Nozick, who like Rawls contributed to the creation of this rationalistic and analytical tradition, has criticized this predominance of
rationalism in philosophy in his later works, turning instead to metaphysics for a place to ground his concept of man.

In his introduction to *The Examined Life* and the foreword to his last published work—*Invariances*—Nozick presents his methodological remarks on how the ethical norms are connected with metaphysical assumptions about the human soul, the improvement of which is the goal served by all philosophical research. Nozick returns here to the Kantian conviction of the need to base ethics on metaphysical foundations, realizing that the analytical philosopher, who is doctrinally obliged to abandon metaphysics, cannot completely do so when they enter the field of ethics or anthropology.

In *The Examined Life*, the philosopher embarks upon a critique of contemporary analytical philosophy, accusing it of only obtaining partial knowledge, leading to the impoverishment and division of philosophical problems. He claims that the main object of philosophy should be man as a human being addressed in its entirety. He appeals to his readers in the following manner: “I would like to speak to your whole being, and to write from mine.”

Nozick makes reference to Plato, who presented a tripartite division of the soul: the logical, emotional, and appetitive, believing that the ideal of life is a state when the logical part controls the other two. In contemporary philosophy, however, these parts of the soul speak to one another; in particular, logical minds appeal to logical minds, with both sides of the communication process being solely these rational parts of the mind. According to Nozick, this dismembering of the human individual, which is a consequence of the dominance of the analytic tradition in contemporary philosophy, limits the potential for the analytic research to be practiced. It can be remedied by referring to a different way of philosophizing—to Cartesian meditation and to rational reflection on life. This method permits one to talk about the self and human life in a full manner and thus build a holistic concept of the individual on the basis of ethics.

**LIBERALISM AND INDIVIDUAL FREEDOM**

In political philosophy, the antidote to the domination of rationalism is the theory of public choice, one that is based on empirical foundations and with a conception of a person as a real, rationally choosing entity; the results of collective decisions are not determined by the notion of justice, as is the case in the theory of Rawls. There is also no room here for extreme relativism or subjectivism since the constitutional choices themselves should be unanimous. In public choice theory, the liberal person chooses in an indeterminate fashion, and the rationality of the choice is associated with the specific mentality of exchange and cooperation that is of benefit to the individual. This
conception of the individual is in the spirit of liberalism and does not lead to an authoritarian state (unless the individuals themselves choose such a regime unanimously). Furthermore, the adoption of the paradigm of exchange that is characteristic of economics permits the narrow understanding of rationality as selfish, self-interest-serving individual ends to be overcome in favor of the common good.

Thus, the liberal concept of the person contained in the theory of public choice seems to be the closest today to the liberal tradition. This theory has further advantages that Sen pointed out, namely that apart from its empirical dimension, it also has a procedural nature (the results of collective choices are not predetermined). Although it may be argued that the empirical approach does not faithfully mirror reality, it is nevertheless detached from the utilitarian consequentialism that Sen believes characterizes the majority of contemporary liberal theories. Sen rejects this consequentialism and modifies the theory of public choice accordingly, stating that the measure of the actual liberal freedom of individuals is their ability to function in a democratic state, in other words, having the greatest possible number of choices available to them.21

Contemporary liberal philosophers advance a vision of the individual as a free being, while freedom, which they regard as the determinant of humanity, is manifested in individual choices. This freedom is not unlimited and absolute, since it depends on the choice of restrictions, rules, or institutions. Even though its basis is the liberal theory of human rights, the most important of which is the right to freedom, liberals are interested not so much in justifying this right, but rather that it be guaranteed within the state. Therefore, the subject of analysis is political freedom, the freedom to choose within the state, which consists of the fact that the individuals not only choose within the institutional structures of a given state but, in a sense, also choose the state in which they live. These two types of choice, the choice of the political (constitutional) structure as well as the choices made within it as distinguished in the Rawlsian conception, are analyzed more precisely in the theory of public choice. Rawls focuses his attention on the nature of the political institutions that arise as a result of these choices while public choice theorists are more interested in the rules according to which political life will take place.

In their descriptions, liberals usually omit the context of the tradition or culture in which the person is embedded, since they are more concerned with emphasizing the autonomy of the individual and their ability to shape the political structure and environment in which they live. The constructivism that is characteristic of this approach means that even concepts that emphasize their empirical origin use assumptions and make theoretical simplifications in order to create the theoretical outline of the state. This
approach was founded in modern philosophy, as part of the liberal tradition of the works of Hobbes, Spinoza, and Locke, and is continued today with the awareness that the liberal concept of the person functions within the theory of the democratic state and is a specific model rather than a full description of human nature.
The concept of freedom, much like the concept of authority, is the subject of various definitions in political philosophy. However, political freedom in theories of liberal democracy is understood as a choice (preference) of the individual or as a human right. These definitions are not contradictory, since the individuals’ preferences presuppose their freedom and the ability to make choices, and these freedoms take the form of rights in society. These rights serve the individual in their interactions with the state, and their number and scope vary depending on the type of state power. Consequently, the concept of authority, which has been defined in numerous ways in political philosophy, political science, and sociology, may be summarized as the powers that the authority has over its citizens or that a ruler has over their subjects.

This multitude of definitions stems in part from the fact that these concepts were treated thoroughly and analyzed as if they had their own unique essence in traditional expressions of freedom and power, but modern liberal theories are based on ontological individualism. This concept assumes that real existence is vested in individuals living in a state, while their freedom manifests itself in the relations between them and also between individuals and the government. Thus, in considerations concerning the freedom of the individual in a democratic state, the most appropriate approach seems to be to regard freedom as a relationship between an individual and the authority (or ruler) in the state.

The Polish philosopher Józef Tischner addresses the notion of political liberty in a similar manner. In his work *The Ethics of Solidarity*, he states that
the legitimization of power is closely related to the question: What am I as a member of the community?

“To understand myself, I must find the answer to the question: to whom am I subject, to what extent and why.” According to him, “Political awareness is an important part of human self-knowledge or social human existence. The power relationship is a stick with two ends.”

This stick with two ends is a masterful metaphor that captures the relational concept of power. At one end of the stick Tischner places authority and on the other, individual identity as a political person and as an element of the state. In his view, the social identity of individuals is shaped in relation to the authority in the state, determined by its scope and source of legitimization. Developing this further, one might claim that the main indicator of political identity is individual freedom, which is never absolute but always limited by authority and remains in a specific relationship with it.

Thus, political freedom is a relationship between the individual and the state, a relationship of a kind which means that if there is growth in individual freedom, then there is a concomitant reduction in state authority. In philosophical works, the relationship between individual freedom and state authority has often been treated as an antinomy. This might suggest that the two elements are irreconcilable (the extreme view) or that their coexistence leads to mutual limitation (the weaker version):

\[
\text{FREEDOM} \quad x \quad \text{AUTHORITY}
\]

If we present this relationship as a continuum, representing unlimited freedom at the starting point and unlimited state power at the other, point x denotes the degree of freedom available to the individual and the degree to which the scope of state power is limited. It is worth noting that this relationship is a zero-sum game—the growth of power causes a decrease in freedom and vice versa.

In a similar manner, one may also present different types of organization of collective life:

\[
\text{ANARCHY} \quad x_1 \quad x_2 \quad x_3 \quad \text{TOTALITARIANISM}
\]

Anarchy is the absence of a state, where all choices and decisions of individuals are taken by themselves, agreeing on particular matters with other people. Totalitarianism, of the type described by George Orwell in 1984, is a situation in which the state exerts complete control over individuals to the extent that the political power even influences the thinking of citizens. While these are certainly extreme, model situations, in reality we are usually
confronted by situations that lie somewhere in between, where \( x_1, x_2, \) and \( x_3 \) denote societies that are free to a greater or lesser extent. In reality, this situation is further complicated by the fact that certain individuals enjoy differing degrees of freedom despite theoretically having the same rights. This problem is related to the functioning of individuals in a particular state. Thus, to assess the degree and nature of this political freedom, one should take into account the most fundamental relationship: individual-authority, as expressed by the freedoms and rights that are possessed.

In modern philosophy, this problem was described by Hobbes, who takes the individual subjected to the determinism of nature in the state of nature. During the formation of the social contract, individuals transfer their power to the sovereign and submit to his absolute power. Yet, even in the Leviathan state individuals manage to retain a certain degree of freedom, as the sovereign’s power is limited by their inalienable right to preserve their lives. In general, Hobbes is a supporter of a state model that grants the ruler an almost unlimited power to decide the fate of individuals, but Locke assumes that liberty of man in the natural state is not abandoned in the political state as society is founded on consent and on legislature that passes laws. This submission to the legislative power is not subjection to the arbitrary will on another man, thus the liberty of man in society is preserved.

In Spinoza’s political philosophy, the state is treated like an organism or a person. In this respect, Spinoza imitates Hobbes but there is a fundamental difference in their views: according to the English philosopher, the best state is a monarchy while, according to Spinoza, the most perfect system is democratic. Moreover, in his conception of democracy, Spinoza goes beyond the aforementioned antinomy of freedom and power. As Michael Della Rocca notes, establishing the proper relationship between freedom and power in the Dutch philosopher’s concept is closely connected with the existence of the state:

Because the state’s existence depends simply on the agreement among its citizens and because the agreements depend on the willingness of the citizens to abide by it, one way—and perhaps the only way—to destroy the state is to make its citizens unwilling to abide by their agreement. This unwillingness can occur either through the extreme repressiveness of the state—i.e. by the state’s allowing its citizens too little freedom—or by the state’s being too lax—its allowing its citizens too much freedom.\(^4\)

The task of political power is, above all, to care for the freedom of its citizens and to set its limits, ones that are optimal from the perspective of the good of the state:

The most powerful state is the one that accords its citizens the most freedom as is compatible with the existence of the state itself. Thus, a truly powerful state
enhances the power of its citizens. Similarly, a truly powerful citizen enhances the power of the state . . . Thus a wise and powerful state will seek to make its citizens as powerful as possible. And a wise and powerful citizen will seek to make her state as powerful as possible. This activity of free individuals and the activity of a free state harmonize and reverberate in an even-increasing fashion.5

Spinoza argues for democracy, a system that accords individuals the greatest possible freedom and also one that legitimizes state power. He describes this in the unfinished work *A Political Treatise*, and also in *A Theologico-Political Treatise*, where he defines it as “the body politics” that “possess sovereign natural right over all things.”6 In his opinion, democracy is the most natural form of a state, one closest to the freedom that it accords to every person: “In it none transfers his natural right so absolutely that he has no further voice in affairs, he only hands it over to the majority of a society, whereof he is a unit. Thus all men remain as they were in the state of nature, equals.”7

**FREEDOM LIMITED BY THE STATE**

Looking from the contemporary perspective at the political theories created at the cusp of the modern era, Spinoza’s concept seems surprisingly modern and almost a precursor to the concept of democracy that was formed during the second half of the twentieth century, when tremendous research on this kind of system took place. At the same time, political life has seen a marked increase in the number of democratic states, as exemplified by the present Central and Eastern European states. There are many theoretical models, including that of Rawls, which put forward constitutional liberal democracy as a political system corresponding to the idea of a well-ordered society. A model similar to the Rawlsian model is the concept of constitutional liberal democracy advanced by the theory of public choice. In both concepts, the legitimization of democratic power is carried out through a social contract, and in addition, in both public choice theory and Spinoza, there is the same idea of political freedom that is shaped in the relationship between the individual and the state.

If we look at the state as a set of elements (individuals) with a mutual relationship and remaining in relation to the whole system (state), the most important factor in this structure is the relationship between the individual and the state, in other words, between the degree of freedom that the individual enjoys and the scope of state authority. The concepts of freedom and authority in some absolute sense or in pure form are irrelevant from the perspective of liberal political philosophy, since it is assumed here that the individual lives in the state and must participate in this game of freedom and power.

The state may be treated as a political market, a common approach for the theory of public choice; in this understanding, freedom and personal safety are
equally highly valued by individuals. These are exchangeable goods: freedom is exchanged for security (i.e., the power of the state). This transaction is metaphorically described by means of the social contract: individuals in the state of nature (without the state) agree among themselves that they will limit their freedom to establish a political power that will ensure their safety. In a clear form, this view is expressed in the philosophy of Hobbes, where the Sovereign is personified and the exchange is carried out in the same way as in a market, between two units—the subjects and the ruler. Of course, the degree to which freedom may be restricted and the scope of expanded state power may differ. According to Spinoza, they remain in equilibrium in a democracy, and thus this is why it is the best system and most likely to guarantee freedom to the greatest extent.

Figure 11.1 shows the ongoing exchange between freedom and authority in a society over the course of time. This is represented similarly to a demand–supply diagram (with a diagonal indicating the optimum balance between freedom and authority in democracy).

On the chart, a concept of the state that emphasizes freedom (Locke) would be on the left, while concepts maximizing authority (Hobbes) would be found on the right. Democracy, defined by Spinoza as a system that maintains the
right balance between freedom and power, would fit exactly in the middle of each of these lines on the diagonal. Moreover, in Spinoza, this balance occurs at an increasingly high level in proportion to the increase in the rationality of individuals. At each of these levels, both the scope of their freedom and the scope of their power are increased, but they remain balanced.

In the theory of public choice, reference is made to the Spinozan concept of democracy. The exchange between freedom and power as a zero-sum game is not perceived here because limitations coming from authority become self-constraints in a democratic state. Individuals constitute authority, and thus they impose restrictions on themselves in the social contract when a set of basic rights are established (in the constitution) and in subsequent postconstitutional public elections. Yet, in the theory of public choice, Spinoza’s metaphysical assumptions about the individual and the state are no longer present; there is no issue of authority being granted to man by nature and transferred to the state, which in this theory is a community of individuals, and only the latter has real existence. The essence of the state is a set of rules adopted by individuals in the social contract, with both the individual and the state being defined during this contract. The individual’s rights are defined (the scope of their freedom) and the state’s powers (the scope of the government’s powers), which are no longer, like Locke’s, prestate laws of nature, but their content depends on the cultural context.

Democracy is analyzed against the background of other political systems and is prized above all since it best protects the freedom of the individual. Despite their differences, the same manner of thinking is visible in Spinoza and in the theory of public choice since both concepts attempt to overcome the modern antinomy of freedom and authority. Spinoza does so by means of the increase in the rationality of individuals, while public choice theory seeks to analyze the specific types of choices made by individuals. A distinct group here is that of constitutional choices, where individuals establish the foundations of the state system and find their expression in the constitution. During these choices, individuals in the social contract select a system, agreeing to abide by certain rules that will limit their behavior in the future.

How can we explain the fact that individuals voluntarily agree to limit their freedom? A similar explanation to that of Spinoza’s is found in contemporary liberal theories: Rawls, Nozick, and public choice. People understand that life in a state is beneficial for them, because the state protects their lives, freedom, and property. Of these values, freedom is the most important and its expression is the choice of a democratic state in which it can be most fully implemented. Yet in the theory of public choice, there is no fatalism that forces us to choose democracy; it can always happen that a community chooses an authoritarian system. Nevertheless, if we care for freedom, we should choose
The Limits of Individual Freedom in a Democratic State

constitutional democracy because democracy based solely on majority rule does not guarantee the preservation of freedom.

In the theory of public choice, freedom is realized in collective and public choices, by means of which individuals themselves impose restrictions on their behavior, constituting state laws and institutions; in the social contract they unanimously set the rules of the game, which then takes place under these rules. The terror of the tyranny of the majority is a threat, in other words, a model of democracy in which the majority decide everything, because the majority can rule in a despotic way, and freedom of discussion can turn into a tyranny of public opinion.

The rule of the majority analyzed by Buchanan and Tullock in the book The Calculus of Consent is not justified in the social contract. Support here is only enjoyed by unanimity, and the rule of majority is used for practical purposes; the costs of making decisions would be unimaginable if we wanted to decide unanimously on all matters. Moreover, the absolutization of the majority rule in a democracy is dangerous; it can lead to the tyranny of the majority and deprive a large part of society of the possibility of influencing political decisions, and thus, to the loss of freedom. Protection against the tyranny of the majority is the constitution and the set of rules contained in it, comprising which decisions can be taken by a majority and which are to be taken unanimously and furthermore, which decisions parliament is entitled to and which are the preserve of the government. The lack of trust in authority—like a benevolent despot—that is characteristic of public choice theory may be seen in the rules connected not only with fundamental issues (e.g., rules regarding ownership) but also the permissible level of a budget deficit.

If we compare this concept with the Rawlsian approach to democracy, it can be seen that although Rawls declares that his theory balances freedom and equality the best, his main emphasis is on justice. Recalling at this point Tischner’s term, who distinguished between the struggle for bread and the struggle for power, one can say that it is a concept of democracy in which the struggle for bread prevails and the idea of a fair division of the goods created in society prevails. Other concepts (including that of Spinoza) have a political dimension and concern the struggle for power, during which the freedom of citizens is determined.

The relationship between individual freedom and political power in a state allows the assessment of particular democratic states on the basis of the extent to which they guarantee the freedom of the individual and which institutions ensure respect for human rights. European democracies (such as Sweden) are perceived as implementing the Rawlsian model since care of economic well-being is the main goal of the state and causes its growth sometimes even at the expense of the freedom of action of individuals. This statism is characteristic of the European Union, which takes the form of a welfare
state, while the United States is usually regarded as a country that allows its citizens maximum freedom of action.\textsuperscript{10}

The theory of public choice, although it refers to economics and uses its language to describe political reality, does not absolutize the economy, since it emphasizes the importance of freedom. It opens up a subdomain within this discipline: the constitutional economics, focusing on the choice between constraints. It follows that in their decision-making, persons deliberately choose their constraints. Indeed, the theory emphasizes the insufficiency of a purely political approach to democracy and, by reference to ethics and religion, seeks support for the fight against the pathologies present in social and political life. It is also postulated here that all public choices, not only constitutional choices but even those related to current matters, should be made by citizens with the awareness of whether or not the given choice undermines the democratic system and potentially leads to its destruction.\textsuperscript{11}

\section*{FREEDOM LIMITED BY ETHICS}

In the theory of public choice, freedom in a democratic state is superior to the authority, but freedom is combined with the limitations that individuals impose on themselves by means of collective choices. The restriction of freedom does not have to come from the state, but it may stem from the choices made by individuals on the basis of ethical principles. Constitutional political economics underlines the role of such restrictions in both politics and economics. According to Buchanan, under the influence of interest group theories widespread in the 1960s, politics was considered to be a game between pressure groups, something that seems dangerous as it favors an increase of pathological activities in the public sphere. This prompted him to initiate a new research discipline, a constitutional economics that explores the ethical foundations of economy and politics. In terms of the relationship between ethics and the economy, Buchanan developed Max Weber’s famous thesis on the relationship between the puritan work ethic and the effectiveness of the capitalist economy, claiming that in a country where these values are respected, regardless of the religion that prevails in it, prosperity will increase.\textsuperscript{12}

In political life, however, it is not enough to make general choices and then leave the affairs of state to elected politicians and the free play of interests. In politics, there is no equivalent of the invisible hand of the market, and the common good is not automatically generated from the clash of individuals and pressure groups. Citizens should, therefore, watch over what is happening in the state in the periods between elections, participate in public life, and in the post-constitutional choices that concern matters of lesser importance;
they should also bear in mind the common good and the interest of the state as a whole. This good is perhaps democracy itself, maintaining the balance between freedom and power as a system preserving the freedom of its citizens. Private property should be guaranteed in the field of economy, but detailed economic and political solutions are left to the decisions of individuals themselves, with individual freedom being the highest value. With regard to the sustainability of democracy, Buchanan does not share the faith of Spinoza and other Enlightenment advocates in the idea of progress in the constant growth of individual and collective rationality. He believes that democracy is a Western European cultural phenomenon, something that develops through the actions of individuals but can also be lost by the same means. Perhaps other countries outside this cultural circle may also be democratized, but this depends on the will of individuals, their value systems, and, above all, their attitude to freedom: whether they choose freedom and democracy, or the security that authoritarian systems seem to promise.13

In his works, Rawls initially advocates the universal nature of democracy, and the model presented in *A Theory of Justice*, according to the cosmopolitan interpreters of this concept, can be implemented worldwide, on a global scale. In his later works, however, he takes into account the cultural factors and value systems that prevail in collectivities. He claims that the collectivity of nations is formed by states with different political regimes, from which he distinguishes systems where human rights are respected. These collective entities, like individuals, can also enter into a social contract and create a fair international order.14

Another solution is put forward by Sen, who is a strong supporter of the universality of the idea of democracy. He thinks that it can be applied everywhere and is the best system from the perspective of individual freedom. Political freedom expresses itself by means of the possession of basic rights by the individual and thus Sen, like Rawls, attaches great importance to the actions that the state takes to ensure the economic foundations of freedom. But in Sen’s concept, freedom, which manifests itself in the real functioning of citizens, is more important than justice and can be defined as a set of possibilities that individuals in a given state have to face, determining their ability to function in the collective body. It is an empirical measure of liberty combined with the libertarian conviction that it is more important that people are given the opportunity to choose and take care of their well-being than to be recipients of state aid.

In the Rawlsian understanding, it is possible for both freedom and equality to be implemented simultaneously in a democratic state; a state that guarantees equal freedom for all citizens, and political power, is able to realize this postulate. The granting of freedom is potential and while it is a state of
nondiscrimination, it is not a real equalization of people in terms of property, social status, or position in the professional hierarchy. Sen, on the other hand, emphasizes that the potential guarantee of freedom (rights) of the individual is not enough as it is necessary to ensure that people are able to implement these rights and freedoms (the ability to function) granted to them by law. In favor of liberal democracy, he defines it as a system in which people themselves increase their degree of freedom through the institutions or devices that improve their quality of life.

The abovementioned liberal theories of democracy, despite differing in their details, are united by a similar way of expressing the relationship between individual freedom and the power of the state. They consider this relationship within the frame of politics, which they treat as an autonomous field. We will not find answers here to the following questions: Why is freedom important, why should we strive for it and fight for a free, democratic state, and if we live in it, how can we maintain this freedom? The communitarians have highlighted this flaw in liberal theories, stressing that the individual contained therein is an artificial construction, an entity that is isolated from the community that surrounds it. This criticism led to changes in the liberalism of the late twentieth century, in which attempts were made to include the issue of values in the analysis of political life, but nevertheless, some allegations of the communitarians remain valid in this respect.

FREEDOM AS A POLITICAL VALUE

The concept of freedom discussed thus far, which after all applies to a democratic state, does not explain situations where citizens in a given country become aware of its absence or limitations and decide to struggle for expanding the scope of individual freedom. This feeling may be associated with the perception of a democratic deficit in existing liberal democracies or may occur in authoritarian regimes. How can we stimulate the activity of citizens and encourage them to take actions that support democratic institutions? How may we fire people’s motivation to defend democratic institutions in countries where liberal democracy is in crisis or is slipping into a so-called illiberal democracy?

In order to answer these questions, freedom must be defined as a political value. This means that the value of freedom should be based on the traditions, religion, and political culture of the society. Such concepts of freedom can be found in communitarianism.

Charles Taylor, one of the most eminent representatives of this trend, writes in his book *A Secular Age* about the progressive secularization of social life in the modern era, something that has led to the current situation
in which religion has ceased to provide an identity to the group or nation. In the contemporary world, ethics has also lost its connection with religion, with the current trend seemingly dominated by the thesis of the death of God. Freedom understood in the spirit of existentialism—as self-authorship or self-determination—forms the basis of contemporary ethics.

Taylor argues that the initiator of this process was Spinoza, who regarded religions as being associated with an earlier, pre-rational stage of human development, while ethics based on the rationality of an individual is inscribed in the metaphysical, impersonal order of nature or God. Created in the seventeenth century, Locke’s political philosophy was based on the Christian moral order and the concept of natural law. Although these theories differed from one another, in comparison with the Middle Ages, they already contained a new approach to politics and its relationship with metaphysics and religion, and in both cases, the concepts of democracy found their support and justification in religion. In the political philosophy of the twentieth century, metaphysics was rejected; political theories now either stem from one ethical principle (Rawls), or they assume a political structure without moral restrictions (libertarianism), or a pluralistic concept (Berlin) is created that separates the private from public-political spheres.

According to Taylor, these theories describe a new social space. In a traditional sense, social ethics were based on three fundamental values: justice, freedom, and solidarity, and their destruction took place in the Age of Enlightenment. Today, justice has been replaced by the notion of mutual benefits and freedom with liberalization, and instead of solidarity, the reasoning of the individual and rational discussion has been put forward. However, in the former concepts of society, there were something more than benefits, as it is in the Rawlsian concept, which defines society as a cooperative venture for mutual advantage.¹⁵

This pessimistic diagnosis of Taylor regarding contemporary society is to some extent true. Liberal democracy in the contemporary world is a popular system that is accepted by its citizens, and in answer to the question of why this is the case, the reply is that people live well within it, and thus utilitarianism has become the basis for this type of system. Yet in moments of economic crisis—as transpired at the end of the 1920s in Germany—this justification is insufficient to maintain democracy. Perhaps democracies with a long tradition are more resistant to shocks, but one cannot be sure that a purely utilitarian, benefit-based societal bond will not fall apart in times of crisis.

Liberal democracy, as described by contemporary political theories, is a system in which the freedom of the individual develops the most. It is a state that provides citizens with material prosperity and a certain scope of political freedoms and powers, depending on the level of development of a given
country and the laws in force therein.\textsuperscript{16} The aforementioned theories primarily emphasize the possibility to extend the freedom of citizens (in relation to power) so that this process does not disturb the stability of the state. They show how to achieve prosperity and how to multiply it, because prosperity is a natural consequence of a free economy. However, they turn out to be of little use in times of crisis because they do not define the mechanisms that direct the free actions of individuals to save the state, which is a common good. The disadvantage of liberalism is that it lacks the strength to arouse enthusiasm in people and to spur them into action, as Buchanan points out when writing that liberalism lacks a soul.\textsuperscript{17}

How can we arouse the activity of citizens and encourage them to take actions that support democratic structures if they are not associated with their direct profit, or how can we make them limit their efforts to maximize it, thus caring for the good of the community? Liberal theories (such as Rawls) focus on the social contract and the acceptance of the overall just structure of the state. However, reality shows that thinking in terms of solidarity and the common good is also needed in current politics. There was no such motivation for human action during the recent economic crisis in America, when large corporations saved their profits, shifting the costs to ordinary people, and group or individual interest outweighed the common good, which only served to deepen the economic collapse.

The crisis, which moved from the United States to the European markets, led governments to actively interfere in matters of finance in an attempt to save their economies from the dictates of liberal theories. There was a short-lived renaissance of state intervention that was criticized by liberal economists, who saw in it the potential for an increase in statism that would plunge the economy further into a spiral. They emphasized that the government is effectively powerless to easily stimulate the activity of citizens, and that in its stead, cooperation between individuals and government is needed, one that is based on mutual trust and solidarity. In fact, a democratic government and free individuals should not compete with each other but should rather cooperate, and this applies not only to a situation of crisis. Normative public choice theory says that an individual should always take into account, besides their own interest, the well-being of other people in their public choices, and although natural motivation is its own benefit, this interest should not affect the common good or violate the stability of the state.

A similar kind of ethical limitation to the actions of a free individual is also postulated by Taylor, who is of the opinion that social ethics cannot be suspended in a vacuum or based on the conviction that behavior that takes into account the well-being of other people will pay off but should rather be grounded in religion. He claims that although we live in a secular age, religion is far from dead since we have other forms of religiosities to consider.
These are not necessarily understood traditionally, in the sense of being based on the notion of God that causes the restrictions that we impose on our free actions in the name of the good of the community to have meaning. Instead, a rational religiosity is being created: people, seeking the meaning of life and their choices, discover that their lives and freedom take on meaning by means of reference to God. From this perspective, the sacrifice of time, money, and effort for others by the individual, although it does not lead to direct material gain, connects them with their community and maintains its existence. What is termed an ethical constraint by public choice theory is grounded more deeply in Taylor’s concept in the spiritual and metaphysical dimension in which the individual participates, and this dimension provides values and forms the basis for democracy. Democracy alone cannot create values and, if it is deprived of them, it will perish. According to Taylor, religion and ethics are the foundation of democracy in the sense that without citizens who respect the basic values of social ethics, democracy will not survive, and religion offers both a justification and a foundation for ethics.\(^{18}\)

Tischner, in *The Ethics of Solidarity*, essentially preached a similar concept. Distinguishing between the ideas of solidarity of work and solidarity of conscience, he outlined an ethical program for the emerging new Polish democracy, one that referred to the fundamental value of social ethics, namely solidarity. *The Ethics of Solidarity*, a collection of sermons and speeches from 1980 to 1981, were not professional ethics, a code intended for workers and their trade union, but rather constituted a reminder of the central value that generates social energy. This work included the thesis that solidarity, unselfishness, and justice are values that stimulate people to act and allow individuals to act freely, taking into account the common good. However, in the essay *The Ethics of Solidarity Years Later*, written at the end of the 1990s, he warned that years of peace had poisoned this value and that he feared for the future of democracy in Poland. He stated that there were pathologies in Polish democracy that could lead to its destruction: disputes, quarrels, envy, and the most dangerous in his opinion, neo-socialism, which is the increasingly common attitude of ruthless plunder, one that ignored the common good and was without any moral scruples.\(^{19}\)

Both Tischner and Taylor agree with the thesis of contemporary American liberalism that the lack of ethics in public, political and economic life can lead to the destruction of democracy. In their view, contemporary political theory, although it does not refer to metaphysics, must base ethics and its functioning in the life of the community on religious anthropology. The discernible message in their works can be reduced to the thesis that individual freedom in democracy should be limited primarily by the ethical values preserved in the national traditions and culture and, to a lesser extent, by
the state. However, if we stray from the path of freedom, we risk becoming enslaved by some new form of statism.

Another important factor to consider when analyzing people’s motivations to make collective choices is that of emotions. Creating the motivation to attain freedom or maintain it when we are already living in a democratic state requires proper education. Citizens should have knowledge about the democratic system in a society and extensive moral education designed to foster sentiments that make the society stable. Certainly, thinking about political emotions is not something new, reflections on this subject already featured in the works of Aristotle, Spinoza, Rousseau, and James; currently, however, they are a separate subject of research in psychology, literary studies, economics and political philosophy. This approach is expressed in the works of Nussbaum, which are devoted to the analysis of political emotions, such as anger and fear, and focus on the effects they cause on the lives of individuals and collectivities.

We turn here to the sphere of motivation for human actions and ask what emotions lead people to make specific choices in public life. An example may also be discerned in the events from the more recent Polish history, specifically the 1980s. This was the period following the suppression of the Solidarity movement and the introduction of martial law. Union structures were maintained but their organizational and educational work was made illegal. There was a fear associated with this, which manifested itself among the participants of these activities, as well as during illegal demonstrations, as a mass feeling. This fear prompted some to opportunism, while others resorted to reckless acts that did not bring good results for individuals. The best way, as it turned out, was simply to disagree with this system of total power and to use nonviolent methods.

The struggle with the system at the time was in fact a struggle for freedom, the value of which was realized by observing specific acts of repression and violence performed by the authorities. Art, especially both popular and classical music that appeal to human emotions, played an important role in creating a greater awareness of freedom and stimulating human behavior. Transforming negative emotions of fear into an attitude of dissent led to constructive actions that produced a kind of brotherhood and a sense of common purpose—the overthrow of communism. Thus, when public emotions are transformed into rational decisions, they contribute to attaining or maintaining a liberal democratic state and allow an increase in the freedom of its citizens.

Indeed, the necessary condition for the proper functioning of a democratic state is the political culture that embraces a common system of values. This system also includes freedom of speech, which is seen as self-evident and treated as a good that should be equally guaranteed to all citizens in a democratic state. However, acting persons are always confronted with the limits of
their choices and, with regard to freedom of speech, these restrictions appear in the form of ethical self-constraints or legal norms. These limitations are necessary because in today’s world, the threat is not only totalitarian censorship or the manipulation techniques used by politicians in democratic regimes but also the functioning of the Internet, in which expressions of hatred are disseminated and can lead to the destruction of liberal democracy.

Advances in modern technology can also provide a great support to freedom and democracy. Both the Internet and independent media play a huge role in the transmission of information and in forming public opinion. One of their important roles is to educate citizens so that their emotions may find expression in the form of rational debates, which contribute to the democratic culture. On the one hand, democracy cannot function properly without a deep commitment of its citizens to freedom, but on the other, this should be accompanied by the ability to restrict it. This is part of an ongoing process of reaching a balance between legislation, the power of the state, and the individual liberty, which takes place within a democratic society.
Chapter 12

The Libertarian Theory of the State

The rationale of the state in contemporary political philosophy is most often based on a social contract, as in the case of Rawls, yet the most notable representative of political libertarianism, Robert Nozick, acts differently in *Anarchy, State and Utopia*, in which he challenges the Rawlsian idea of justice and the liberal state that is based upon it by means of the concept of the minimal state. His criticism of the Rawlsian theory met with a negative reaction from both contemporary American liberals and many libertarians, some of whom, such as Buchanan or Gauthier, had adapted the theory of a social contract, while others, like Murray Rothbard, advocated anarchism. Nonetheless, Nozick’s notion became a representative position for the philosophy of libertarianism because it was consistently derived from the assumptions of classical liberalism.

The basic axiom presented in Nozick’s theory of the state is individual rights. In the foreword to the aforementioned work, he writes, “Individuals have rights, and there are things no person or group may do to them (without violating their rights). So strong and far-reaching are these rights that they raise the question of what, if anything, the state and its officials may do. How much room do individual rights leave for the state?”

The statement made here that the scope of state power should be determined in relation to individual rights shows that Nozick is only interested in the relationship between the individual and the state, and omits the issue of the specificity of society and the uniting of bonds between citizens. Considering the state as a product of individuals, he uses the theory of the state of nature to show the hypothetical genesis of the state, and this description also has a justifying function, comprising both the *raison d’être* of the state and its justification. The state is a necessity but only one that has been created in
the manner described by Nozick and only if it has moral legitimacy: he calls it a “minimal state” because of the rights that it is entitled to.

It is a state that defends the security of citizens and guarantees the observance of contracts; on the other hand, it does not ensure social security for individuals, leaving them with the sole concern for ensuring their own wealth, education, or health protection. Nozick realizes that these are important aspects of human life, but he thinks that solving these problems should be done with the consent and effort of individuals. What prevents the state from distributing collective property is the existence of private property, which is one of the rights of the individual for Nozick. It is inviolable if it is fair, that is, if it has been acquired and transferred without violating anyone’s rights. But if there have been gross injustices in the historical process, the state may interfere in the structure of ownership to remedy them (the principle of rectification permits this). In turn, the state cannot interfere in the sphere of private property through the tax system because it is a violation of individual freedom.3

NOZICK AND THE MINIMAL STATE

Nozick compares the tax system of the modern capitalist state to a feudal system, one in which individuals were forced to work a few days a week for a feudal lord. With regard to taxation, the modern capitalist state takes the income obtained by an employee for a certain number of hours of work they have performed weekly, and such daylight robbery is just as morally unacceptable as feudal serfdom. Nozick’s theory, however, differs from the anarcho-syndicalist, extreme libertarian concepts of Murray Rothbard or David Friedman, which reject all forms of state action because the minimal state allows citizens to be taxed to ensure their security, while prohibiting the payment of taxes for social purposes. For libertarians like Rothbard or Friedman, the security of the citizens can be organized as the voluntary payment of protection services by individuals and not as redistributive action of the state.4 This view was criticized by American left-wing liberals who accused Nozick of justifying a state that does not care for the well-being of individuals but takes care of economic performance in a way of ruthless free-competitive capitalism. Nozick, however, distances himself from the extreme libertarian concepts, but in his conception of the state, he left essentially sick people and invalids at the mercy of private charity.5

In the reviews that appeared immediately after the publication of Anarchy, State and Utopia, it was emphasized that this book was an expression of the kind of prejudices against the state held by an average owner of a gas station in a small American city. He is a man who complains about taxes and
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considers all attempts by the government to interfere in the agreements and transactions he concludes in the name of equal opportunities or counteracting discrimination as unfair. It was surprising that such views had been voiced by a professor of philosophy from Harvard University, and moreover, there was an accusation that Nozick’s work is an example of the *trahison des clercs* and intellectual dishonesty. The above allegations were formulated with a view to the practical application of this concept in current politics, but if this concept is considered as a kind of philosophical discussion with Rawls, they seem unjustified and testify to a misunderstanding of the author’s intentions.

It is worth taking a closer look at the arguments presented by Nozick for the minimal state, particularly those responsible for law and order and permitting to the enforcement of concluded agreements. It is based on showing its genesis and how it could be created in the original state of anarchy as a result of the natural process of individuals joining many security agencies. Nozick assigns two security functions to the protection agencies: settling quarrels between the agency’s members and enforcing the decisions that have been made; settling an argument between agency members and outsiders and enforcing decisions. He concludes that after some time, people would think that it is beneficial for them to join the strongest agency, which would soon hold a monopoly in the function of ensuring law and order, that is, the prototype of the state.

Nozick tries to show that care for one’s security and own interests is the reason for the creation of the state. Hobbes did the same, but Nozick does not share his conviction about the need for a contract to appoint an authoritarian sovereign but thinks that one can think of the state as the equivalent of a security agency. Why, however, would someone sign up for an agency that promises to protect him, judge disputes, and support him only if he is right in the dispute? It seems that an agency that promises that it will always protect its members, whether they are right or wrong, will win over agencies promising to protect their members only in a just cause and will become a dominant agency. Thus, the agencies will probably not maintain impartiality in their decisions and will always act in favor of their members.6

If there were rules for the admission of new members and rules of conduct that were identical for all agencies, other small agencies could exist alongside the parent agency. But Nozick tries to show that the prototype of the state can arise unintentionally, without the conscious effort of those who want to realize a structure that seems right to them; therefore, there can be no question of the regulations being adopted in advance. On the other hand, he assumes that the agencies will be the sole arbitrators and enforcers of the fair resolution of disputable issues, but in fact, there is room for arbitrary decisions and there is no reason to say that the prototype emerging from the efforts of individuals wanting security will have anything in common with justice and morality.
In Nozick’s conception, as Barry observes, justice is identified with the advantage of the stronger, similar to the definition given by Plato’s Thrasymachus. Defenders of Nozick’s position, however, stress that in speaking about the state of nature, he is considering the best possible form of anarchy one could expect. It is a “situation without a state in which people adhere to moral limitations and generally act as they should,” and in which individual rights are violated only exceptionally. Although agencies acting illegally are not excluded from this concept, they may face resistance from both individuals and other agencies in the form of a boycott against them, which will lead to their collapse.

THE CRITIQUE OF DISTRIBUTIVE JUSTICE

The most important part of Anarchy, State and Utopia is the attempt to prove the thesis that any state that goes beyond the basic functions of providing people with protection and security is unfair. In his objections to both the Rawlsian theory of justice and utilitarianism, Nozick opposes all forms of redistribution, arguing that coercion conflicts with fundamental moral law, while in the latter part of his work, he proposes a different path that would lead to the same outcomes as the previous minimal state. His example is a hypothetical situation in which every person can create a utopia, a state that in their opinion is perfect, populated with any people they imagine. As a result, a situation may arise in which the rich live in one country with the rich, and the poor and sick find themselves in poverty, because no one wants to create states with them and pay for their maintenance. Leaving poor and handicapped people to their own fate in the utopian vision of the state leads the criticisms formulated against the concept of a minimal state to undermine Nozick’s main goal, which is to justify this kind of state and show the morally right process of its creation.

Perhaps Nozick does not treat the genesis of the state as a historical fact, but rather as a hypothesis illustrating the possible shaping of a just state in a spontaneous way. The libertarian theory of the state attracts the attention of researchers as a theoretical project whose merit is to improve the language of contemporary political philosophy. The assumption is “to explain the invisible hand,” a concept formulated by Smith and raised here to the rank of a general methodological principle. This is an explanation of a spontaneous process that seemingly appears to be the result of planned actions, although in fact it results in a state created by individuals who have no conscious intention to build them and only care about their own interests and security. This explanation is also based on the concept of the state of nature, but Nozick does not describe this original state in detail, nor does he construct the state
of nature as a completely artificial situation, as Rawls does, while he defines the state of nature through the negation of the state, through anarchy. This is a hypothetical situation: it is accepted as a starting point, with the author declaring in advance the intention of overcoming it and demonstrating the necessity of a state. In this light, the arguments of Nozick’s critics that he should not use moral categories when writing about the state of nature is invalid because he does not treat this state as the history of the life of primitive man but as the best possible state that could be realistically expected.

A theory of the state of nature that begins with fundamental general descriptions of morally permissible and impermissible actions, and of deeply based reasons why some persons in any society would violate these moral constraints, and goes on to describe how a state would arise from the state of nature will serve our explanatory purposes, even if no actual state ever arose that way.  

The comparison of the best possible state of anarchy with the state shows that this situation without a state is worse than subordination to a coercive power and, in Nozick’s opinion, the fact that one may proceed in a morally valid manner from anarchy to the state is sufficient grounds for the existence of the state.

At the same time, he rejects the potential further accusation against this concept that it is based on unbelievable assumptions that the real beginnings of states are connected with conquests and wars, citing the concept of “potential explanation” created by Hempel. He asserts that, even with untrue assumptions, the potential of the fundamental explanatory value of the invisible hand is cognitively valuable because it illuminates the whole field of politics and facilitates its understanding. It is therefore an explanatory model that does not have to be based on real assumptions, as long as they are reliable. The explanation is cognitively valuable because it explains the whole field in terms that do not come from this domain, in this case explaining the field of politics in nonpolitical terms. This is the nature of the explanation referring to the concept of the invisible hand.

However, it does not justify or defend the state—it only explains why the state has certain features, for example, a monopoly on the use of force. It is a question of a different kind than the normative question of whether the state can justifiably claim this right.

THE MORAL JUSTIFICATION OF THE STATE

In order to consider it fully, it is necessary to examine Nozick’s argument concerning political obligation more closely since it introduces a new element
to the previous discussion on the justification of the state. Nozick breaks down his justification into two stages: (a) the transition from the state of nature to security agencies; (b) the shift from many security agencies to one dominant agency that becomes the prototype of the state.

Thus, initially in a state of nature, many agencies compete with one another in terms of providing the good that is protection. However, due to the specific nature of this good, the supply of which requires a monopoly, ultimately one dominant agency is created. If it removes all of the other agencies in the given area, then an ultraminimal state will be created. It will enter the phase of a minimal state, when the agency will also protect those who do not pay for it. This process is done without violating anybody’s rights: the state may prohibit risky actions taken by independent individuals or security agencies since it compensates for the ban by providing free protection for those who would undertake such activity.\textsuperscript{12}

The justification and moral validation of the first stage of transformation is that of rational acceptance, one similar to that adopted in the seventeenth-century concepts of social contract such as Locke’s. The legitimacy of the second transformation poses some difficulties because it is necessary to solve the problem of what to do with individuals who have no intention of signing up to an agency and do not want to agree to obey its authority. Nozick’s reflections on the prohibition of individuals conducting defensive activities on their own, due to the risks they entail, and compensating them for this prohibition, lead to the conclusion that these “independents” will eventually be encompassed by the protection given for free.

However, the following question arises: Why should the state not also distribute goods and services in a similar way? The minimal state is in a sense redistributive: It provides protection for all citizens in a given area, even those who do not pay for it; it forces some to pay for the protection of other people. Why is this the only legitimate form of redistribution in the state? According to Nozick, however, the provision of protection is not a form of redistribution but can be explained rather by the principle of compensation, since a security agency based in a given area would not be able to carry out its tasks effectively if it did not secure a position of monopoly. For those who do not want to be protected, care would be provided for free as a form of compensation necessary for the agency to effectively fulfill its function. Thus, only the enforcement of security decisions is monopolistic and therefore in this case, only the dominant security agency can become a state. The concept of this kind of monopoly of power is the spontaneous process of the invisible hand that takes place through morally acceptable means.\textsuperscript{13}

The extension of the state power to the sphere of the distribution of goods is, according to Nozick, unjustified; what is more, it leads to the extension of the state to a particular form of socialist state that must limit the freedom of
individuals. However, since neither equality nor social justice are reasons to limit the freedom of individuals, only the minimal state is justified, although the vision of the state presented by Nozick seems a difficult one to accept. This is not because, as critics claim, the utopian vision of a perfect state cannot be directly identified with the minimal state and there is no transition to a minimal state from the assumptions of a utopia. Even if that were the case, a utopian minimal state would certainly not be a model that would inspire one to change reality, nor an attractive enough goal to fight for. Yet this theory is coherent, and it would be difficult to refute it on the basis of its own assumptions. It can only be challenged at the starting point by questioning the conviction that the foundation of the state is the desire for security and competition rather than the desire to survive and facilitate the life of individuals by establishing mutually beneficial cooperation.

Indeed, this kind of explanation refers to the concept of collective bargaining, and the main disadvantage of Nozick’s theory of the state is its failure to observe the significance and unique nature of collective decisions. He does not consider these decisions and does not notice their importance for the establishment of collective institutions but only recognizes individual ones. The extreme individualism underlying this concept distinguishes it from the individualistic theory of public choice, in which the methods of reducing collective choices to individual decisions are analyzed. Nozick tacitly assumes that individualism excludes collective bargaining, and that rational choice is an individual choice in which the individual has knowledge of the conditions of action and decides his own interests when making his decision. There is no place for public choices—collective choices that, despite being taken by individuals, not only concern themselves but also other people without the operating conditions being fully known. It is true that he writes later that he did not include some specific choices based on solidarity in *Anarchy* . . . , but this is not the same.¹⁴ In public choices it is, after all, not about the altruistic nature or solidarity of individually undertaken actions but rather a methodological matter. They are an attempt to translate the activities directed by the individual’s own interest into collective decisions that have in mind the good of the whole community.

Nozick rests his assumptions on the methodological individuality of the Austrian school, particularly on the ideas of Carl Menger, which state that all theories in the social sciences should be reducible to a theory of individual human action. The theoreticians of the public choice school also take some inspiration from methodological individualism, analyzing the unique character of collective decisions and the mechanisms of their submission or division into individual choices.

Criticism of a state developed with extensive powers does not exclude the possibility of permitting distribution to some extent, with the consent of the
individuals concerned. This avenue has been explored in research undertaken by contemporary scholars, including three Nobel Prize winners—Arrow, Buchanan, and Sen—who analyzed Arrow’s problem of the transition between individual preferences and making collective decisions.\textsuperscript{15}

In these studies, attention was focused on the problem of arranging individual preferences in such a way as to maximize the social welfare function or to meet a certain set of normative criteria; attempts were made to determine which social status should be chosen when the preferences of individuals are given. Nozick, however, did not undertake this kind of deliberation or related attempts to define rationality, which he understands according to the tradition of classical liberalism as economic rationality, the pursuit of maximum benefit for individuals.

**NEWCOMB’S PROBLEM**

Newcomb’s problem arises in this context in the work of Nozick: the dilemma of individual choice, in which a being who possesses essential knowledge about our decisions and is able to predict them makes us choose between two boxes. One of which contains a thousand dollars, while the other may contain one million dollars or remain empty, depending on whether or not this being predicted that we would choose the second box. However, we remain uncertain about whether these million dollars have been hidden in the second box. The problem is that when we do not have full knowledge of the operating conditions, and these conditions have already been determined, what principle should we reasonably be guided by: the principle of maximizing the expected utility or the strategy of domination? Nozick suggests the latter, which prescribes a certain profit in the form of a thousand dollars and does not risk choosing an uncertain, albeit enormous amount.\textsuperscript{16} However, he does not consider this problem on the theoretical ground of collective decisions, but within the traditional theory of rational choice. In contrast to David Gauthier, who gave a different solution to the above dilemma, in making the assumption of rational cooperation between a beneficial being and an individual choosing, Nozick does not take into account the possibility of cooperation between people and justifying the benefits of rational choice.\textsuperscript{17} In retrospect, his concept appears to be a logically coherent and closed work that does not open up new research perspectives as is the case with public choice theory.

Nozick’s attempt to defend classical liberalism seems somewhat anachronistic, although perhaps there are still supporters of his twentieth-century version derived from von Mises, including the concept of the state not compromising with socialism. In fact, the vision of the state in Nozick (contrary to the title of the book) does not fit into the tradition of utopian thought, which
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consists of constructing a picture of a nonexistent, only conceivable state that would be realized in the future. It is, however, a polemic with the concept of Rawls’ liberal state, undertaken in the name of defending the freedom of the individual. The theories presuming a minimal state, together with Hayek’s political philosophy, seemed attractive in the socialist era in the countries of Central and Eastern Central Europe, among the opposition circles, but this libertarian ideology lost its influence after the political transformation.

Nozick, attacked for the inhuman consequences for practical collective life stemming from his conception, responded to the accusations in a similar vein to that of von Mises in the form of the paper: *Why Do Intellectuals Oppose Capitalism*? In his opinion, this is because they imagine the state as a school in which teachers play a major role. Intellectuals dream of playing an important social role, but if people were offered a choice between socialism and capitalism in a state (as in Israel, for example, where one can live in a kibbutz), then perhaps only a handful would choose socialism. This does not resolve the practical problems of his theory, nor does it provide a convincing justification for the thesis of the minimal state. However, during systemic transformations as was the case in Central and Eastern Europe after the fall of communism, the argument for a minimal state could not be translated into the language of practical guidelines, and many years later it seems that, together with the other countries of the European Union, they are pursuing a free-market economy with restrictions imposed upon it in the spirit of Rawlsian liberalism.

The arguments of Nozick against this form of system can be seen today in a new light, as a libertarian call to limit state power since capitalism built from scratch also fosters the growth of bureaucracy. Limiting the power of the state and reducing the influence of bureaucracy can be achieved by increasing the activity of citizens and their participation in collective decisions, primarily at the local level. This is a road that seems to lead not to a minimal state but rather a liberal democracy in which citizens are able to influence the decisions made about their lives. Such a model is proclaimed by the theory of public choice, one that defends the freedom of individuals from the omnipotence of the centralist state, is based on empirical grounds, and suggests the possibility of how to limit state power in a democratic state.
In modern political thought, the state appears as an institution constituting laws, creating entitlements and enforcing their observance. The state thus understood is a historical phenomenon rather than a logical necessity and therefore it requires justification, particularly in terms of how it explains the need for the state to exert power and the resulting obligations on citizens to obey its orders. Considered in connection with the issue of political obligations, the notion of state power includes two elements: the power to issue orders and the obligation of citizens to obey them. 

In analyzing this issue, Raphael emphasizes that while obedience to authority may stem from prudence or fear, it can also be dictated by benefits and the interests of individuals, but the power to issue orders must ultimately flow from a moral commitment on the part of the subjects, from the promises that they agree to keep. Hobbes had already observed that present states had been created by conquest, but the legitimacy of the conquerors only comes about when the subjects agree to this conquest and commit themselves to obey their commands. Hobbesian political theory is a classic example of applying the notion of a social contract to justify a political commitment, yet later philosophers of the Enlightenment, as well as contemporary thinkers, have connected the contract with the ideas of the general will (Rousseau) or justice (Rawls) to explain the genesis of the state and law or to justify different types of government.

Rawls used the idea of a social contract to define justice and formulate his concept of a well-ordered society and a democratic state that, through its institutions, implements the principles of justice. This was an innovative approach, given that the notion of the social contract among political philosophers had largely lain dormant for over a hundred years. The historical version of the contract and its explanation of the actual existence of the state had
been discredited, and the explanatory value of this concept became exhausted as a result. However, since the 1950s, in the theory of public choice, issues have been raised that are similar to those of Rawls, including the question of public goods or the prisoner’s dilemma. They analyzed how individuals can overcome egoism and self-interest and reach agreement. It was justifiable that the social contract, as it is contemplated in its various variations, is a unanimous collective agreement of consent to the rules set out in it. This union of unanimity and a purely hypothetical social contract was demonstrated by public choice theorists, Buchanan and Tullock, in *The Calculus of Consent*. Together with other representatives of this school, they then conducted research on the question of the social contract in connection with the analysis of unanimity rule, and also in relation to the constitution, which, like Hobbes, they treated as a contract concluded between members of society in order to establish the foundations of the state and the government to which all citizens must subsequently agree.4

The subject of the analysis of public choice theoreticians is the choices made by people, and these analyses are performed using various methodological tools and within different branches of the social sciences. Buchanan’s notion, which is discussed later in this chapter, deserves special attention since, especially in his later works, he presents what constitutes an original and innovative concept for the political philosophy of twentieth-century liberalism.

In the liberalism of the second half of the twentieth century, where particular attention was paid to ethical arguments, social contract theory found broader applications thanks to its ethical value. It enabled the state to be founded on the acceptance of equal and free individuals and their voluntary consent, avoiding the state being perceived as a coercive device targeted at the individual and aimed at destroying their freedom.5

**THE RATIONALITY OF INDIVIDUALS AND THE CREATION OF THE STATE**

The question that the creators of the public choice theory tried to answer was as follows: How can one justify the existence of the state if one takes the Hobbesian concept of man seeking his own advantage as the starting point? Bearing in mind that the state is an institution in the theory of public choice, and in fact a set of rules resulting from public choices made by individuals, this question can be formulated as follows: How do people overcome their self-centeredness and self-interest and agree on a system of rules limiting their future choices? Certainly, they do so for their own benefit because life in the state brings them benefits in the form of security and access to different...
goods. The notion of individual benefit is the subject of economic research, so a characteristic feature of public choice theoreticians is that they turn to methods used in economics and attempt to explain the social contract by means of economic theories. They adopt an economic concept of man that refers to the Hobbesian vision of the individual and its development in the works of J. S. Mill and Max Weber into the *homo oeconomicus* view of man. In turn, Buchanan also draws attention to the paradigm of exchange, of cooperation, which is derived from economic thinking and of benefit to the parties within it. The paradigm of exchange, in his opinion, can be successfully applied in political theory and thus lends Buchanan’s contractarian approach a unique character that distinguishes it from the purely political theory of Rawls.

Furthermore, despite being like Rawls in assuming an initial equality of people, Buchanan and Tullock are not obliged to take up the hypothesis of the original position and the parties within it, which after all are not real entities but generalized forms based on specific important human attributes. In public choice theory, the social contract is agreed upon by real people thinking in terms of profits and their own benefits. It remains to be seen precisely how they can get to this point in an unselfish manner and consent to the creation of the state? According to the aforementioned theoreticians, this is facilitated by uncertainty, the situation in which the individuals make their public choices, and especially constitutional choices defining the fundamental rules of the organization of collective life.

**THE OPEN PROCEDURAL NATURE OF THE CONTRACT**

In the already mentioned work *The Calculus of Consent*, published prior to Rawls’ *A Theory of Justice*, Buchanan and Tullock analyzed the conditions for the attainment of unanimity, coming to conclusions in many places that are similar to his; for example, the Rawlsian “veil of ignorance” became a counterpart to their situation of uncertainty. However, following the publication of Rawls’ work, Buchanan entered the lists against some of its key concepts, especially the Rawlsian version of the social contract. In the 1980s, during Ronald Reagan’s time in government, the creator of the theory of public choice engaged in research and analysis of the contemporary political and economic situation, directing his criticism at the political style of contemporary politics in which the contractual obligations are not respected.

Buchanan’s problem with the character of the Rawlsian social contract was not focused on secondary concerns but on a matter of fundamental significance, specifically the consequences stemming from the given form of the contract for a particular state. Rawls, in the first chapter of *A Theory of Justice*, wrote “My aim is to present a theory of justice which
generalizes and carries to a higher level of abstraction the familiar theory of the social contract as found, say, in Locke, Rousseau and Kant.”10 The question arises, however, as to why the author does not mention Hobbes at this point. In a footnote, written in the style of a commentary, we can read the following: “I shall regard Locke’s Second Treatise of Government, Rousseau’s The Social Contract, and Kant’s ethical works beginning with The Foundations of the Metaphysics of Morals as definitive of the contract tradition. For all of its greatness, Hobbes’s Leviathan raises special problems.”11

This problem can be explained in the following way: In the Rawlsian conception, the concept of a social contract is not the purpose of his reflections but is rather utilized by the philosopher as a tool for defining justice as fairness. In his opinion, thanks to the abstract application of the contract, one can justify a theory consisting of two substantively defined principles of justice: the principle of equal freedom for all and the principle of permitting inequality, provided that they work for the benefit of all or the most disadvantaged social groups. This theory must be agreed to by the contracting parties, who for Rawls are rational beings, stripped of the knowledge of their position and social status, as well as their abilities and inclinations. These entities obviously cannot be real people, and thus the situation of the contract is not real. The question arises of why we should consider such an artificial situation. The answer is that it is because it describes the conditions necessary to make impartial decisions and permits the construction of a model or template that allows the assessment of real countries and institutions in terms of the criterion of justice.12

This manner of proceeding is in the spirit of Rousseau, who wrote in The Social Contract that the social contract resolves a fundamental human problem, namely: “To find a form of association which may defend and protect with the whole force of the community the person and property of each associate, and by means of which each, coalescing with all, may nevertheless obey only himself, and remain as free as before.”13

For Rousseau, the republic was the best form of collective life, while in the Rawlsian view, it was a constitutional liberal democracy. A well-ordered society, a just state, reflecting the principles of social justice in its structure, is a democratic society. In light of the Rawlsian reflections on justice, the legitimacy of the state with the constitutional system of liberal democracy can be defended because it appears to be a voluntary association of free and equal people, retaining these characteristics in the state phase, transformed into a structure of a just state. As an aside, it is worth noting that the contract alone is insufficient for Rawls to justify a political commitment but instead requires a complement in the form of the idea of justice. The state itself is not enough, since individuals want to live in a state that they consider to be just.
Libertarian philosophers such as Nozick, and the slightly different libertarian ideas of Buchanan, clash with Rawls over the political structure of the state and its foundations and the defined principles of justice. Both are proceduralists—they think that the right outcome is the result of a correct procedure, and they both agree that the result of the procedure the ultimate choice, cannot be predetermined. Nozick does not attach much importance to the idea of the social contract, while Buchanan, following Hobbes, argues that there is no guarantee that a democratic state will arise as a result of a social contract since completely undemocratic structures can be derived from contractual assumptions. Thus, the creator of the theory of public choice notes that a contractual approach does not determine the outcome of the contract, and therefore, what specific political structure will eventually be established on its basis as a result.

AN INDIVIDUALISTIC CONCEPTION OF POLITICS

Rawls first introduces the concept of justice and then constructs the idea of a well-ordered society, the equivalent of which is a constitutional liberal democracy. Yet Buchanan disagrees with Rawls that the agreement concluded in the original position must lead to this definition of justice rather than to another. This difference is rooted in the fact that real individuals are not present in the original Rawlsian position, but rather rational creatures whose consciousness is limited by the veil of ignorance, while Buchanan assumes that the contract contains real individuals with full knowledge and yet it is possible to reach a selfless agreement despite this. This means that individuals in the Rawlsian contract are morally equal beings; in Buchanan’s concept, individuals are not equal, nevertheless, reaching an understanding and agreeing to fundamental constitutional decisions is possible. Criticizing both these concepts, James Fishkin claims that the Rawlsian individuals have too little knowledge while Buchanan’s have too much for it to be possible to take a selfless decision regarding the future shape of society in any social contract formed in either of these theories.

Buchanan thinks otherwise. From among his predecessors, he mentions Spinoza, whose views expressed in *A Political Treatise* differ significantly from the Hobbesian conception. Here, the outcome of the contract is presented in the form of several potential systemic solutions, while the procedure itself is not connected with the issue of political commitment. Above all, the creator of the theory of public choice takes issue with the fact that when Rawls considers the theory of the social contract, he does not question the structure of the ideal state but, rather, uses the idea of the contract to legitimize the domain of politics. Unlike Rawls, Buchanan does not adopt
any assumptions about the original position—the veil of ignorance; in his version of the agreement, individuals are real people, and yet impartiality of choice is possible in some cases, especially when establishing a group of fundamental institutions by means of constitutional choices. Unanimity affords these choices and institutions a legally binding character, and thus public and constitutional choices are justified in the social contract.

Unanimity is achieved thanks to uncertainty, as a result of which, when projecting rules for the state we have constituted, we are unable to foresee precisely what these institutional changes will bring about. An epistemological barrier arises at this point, which means we act impartially. Unanimity in post-constitutional choices, while possible, is hard to attain and hence the majority rule needs to be applied. Situations arise, however, when the fear of revolution is so strong that it can force rich people to make concessions to the poor, to share their wealth and improve the situation of the poor. It is also evident that the Pareto principle is the equivalent of unanimity in economics, and the optimal choice is one that does not worsen the situation of any actor while improving the position of some individuals.

Thus, Buchanan does not address the traditional issues associated with social contracts, such as the genesis of the state or the problem of social justice, but extends the application of the term of the contract to politics in general, understood as human actions and as a political process within which certain individuals make decisions regarding other people, groups, or societies. These are public choices, and politics is the domain of these kinds of choices: both constitutional and post-constitutional.

For Buchanan, politics is the domain of collective actions and the only justification for collective actions is the contract. If we seek a justification for politics that does not appeal to supra-individual norms and values or something transcendental, it must be contractarian in scope. There is simply no other option. The essence of this situation is that we place limitations upon ourselves by means of our constitutional choices, agreeing and abiding to them.

However, the creator of the theory of public choice asks himself the following question: What cannot be justified by the idea of a contract? His answer is that the majority democracy cannot be justified in this manner. It thus transpires that the discrepancy between the Rawlsian position and his own is in fact greater than it seems. Although the democratic model is preferred in the theory of public choice, in other words a situation in which elected representatives make more detailed decisions within the framework of the rules adopted in the social contract, it is also possible to derive undemocratic political structures from the contractual assumptions. The contract in Buchanan’s conception does not apply to people or institutions but above all to the rules governing the taking of decisions, even though one could not
exist without the other, and thus politics must take place within a *polis*, an organized institutional collectivity.

As Buchanan notes, demolishing the holy status ascribed to the democratic rule of the majority was the main aim of his work coauthored with Gordon Tullock, *The Calculus of Consent*. However, in his later work *Contractarian Presuppositions and Democratic Governance*, he considers the matter in a more detailed manner, posing the question of whether a relation exists between contractarianism and majority democracy and what form such a relationship takes.

Contractarianism, like democracy, presupposes political equality among all members of a politically organized community, both in terms of the application of the law (equality before the law), introducing changes to legal rules, and defining collective actions within the law. Yet political equality does not necessitate the need for majority decision-making, either in the introduction or changing of laws. The majority approach to decision-making is only one of the available options, one for making collective decisions within a certain scope designated by the constitution for such types of decisions. Buchanan distinguishes between three basic planes or stages of collective action:

1. Enforcement of the existing laws—an example of such enforcement is the minimal state of Nozick or the night-watchman state as described by nineteenth-century philosophers. Those who govern are reminiscent of football referees supervising the course of an ongoing game.
2. Collective actions within existing laws—this is the equivalent of the Hayekian concept of legislation, while in the field of economics. These are actions to provide citizens with public goods and services that cannot be provided by individuals or private producers.
3. Actions consisting in changing the existing law and existing legal rules—these include constitutional law or law in the Hayekian understanding. The essence of these activities is to change the rules of the game.

As Buchanan notes, politicians appointed to act within the law (level 2) often transgress onto the third level, that of law making; in this manner, they behave like football referees who change the rules of the game while it is in progress.

He also puts forward arguments against the concept of democracy as the rule of the majority, which is supposedly justified by a social contract. It is expressed in the conviction that whatever the majority establishes is justified because the majority procedure is itself a form of legitimization and the “majority” becomes a normative idea.

To permit the majority in a community to decide whether a citizen has violated the law or not means that the law does not exist independently or
autonomously, thus opening up the potential for the tyranny of the majority or the ruling group. However, according to Buchanan, it seems evident that such a system cannot arise as a result of a contract that people voluntarily enter into. Thus, the first and fundamental normative principle claims that entrusting power to the state or its representatives must be limited by law.

**THE CONTRACT AS A POLITICAL JUSTIFICATION**

Another question reads as follows: What does a contractual justification for these three levels of politics look like and what is the contractual basis for particular types of democratic decision-making?

It should be recalled that Rawls also distinguished several stages or levels of the political process in *A Theory of Justice*: constitutional, parliamentary, administrative, and judicial. In each of these, the veil of ignorance is slightly askew and more information is available. The social contract provides the ethical basis for each of these political stages, and of course, the political process is also treated here hypothetically as a model for assessing real situations (e.g., whether a constitution is just).

According to Buchanan, particular types of collective decision-making (with the exception of unanimity) do not have a basis in the social contract, yet they can work for the benefit of the community. So when it comes to the execution of laws, we see that while it is not obvious that democratic decision-making procedures are in force in a state whose task is to enforce law (e.g., in the Hobbesian state), it is difficult to imagine that individuals will voluntarily agree to the tyranny of the majority or some kind of absolute ruler who is unlimited in power. Regarding the provision of public goods, the situation is as follows: although the majority rule as a merely legitimate policy-making principle cannot be derived from the contractarian perspective, it is permitted for practical reasons as the costs of unanimous decision-making would be unimaginable. In addition, the majority rule fulfills the criteria of assumed political equality, provided that the right to vote is associated with being a member of the community. On the other hand, people who are members of a victorious coalition have more influence over decisions than others. If politician “A” was elected by majority vote, obtaining 60 percent of those cast, then those who belong to the winning coalition gain more than the others in the 40 percent minority who supported “B.” Yet in the system of decentralized political decisions, these unequal weights are neutralized and do not have to pose a threat to individual freedom.

In terms of the most important type of decision—those connected with the changing of law—Buchanan and Tullock categorically claim that democracy as *ex ante* political equality may be derived and justified contractually, while
democracy as majority rule is only permissible to a limited extent and under certain conditions. This is especially true when we talk about the constitutional stage of changing the law, where no rule weaker than unanimity is justified. It is only at this stage that the final contract is made, whether as a hypothetical conceptualization or in reality. Any change to the rules must be approved by all participants in society. In this context, Buchanan frequently uses the example of a parlor game whose rules are set by the participants before it begins.

When we move from these abstract considerations to reality, we can see how these levels of decision-making—enforcement, lawmaking and the establishment of legal rules—are mixed up in the actions of politicians. According to Buchanan, however, the actions of individuals (private persons), just like the actions of the representatives of state power, must fall within constitutional limits. The conviction that democratic decision-making mechanisms automatically prevent the abuse of power is, according to him, an illusion. This is because a state in which politicians, political scientists, and lawyers do not distinguish between levels of law and lawmaking cannot be justified on the basis of a social contract.

Thus, in Buchanan’s opinion, the political and legal order can be classified as contractual if it meets the following criteria:

1. The actions of both private and public persons are limited by law and, above all, by the constitution.
2. Within the law, all members of the public have equal access to decision-making structures and all have the same influence on determining decisions at the initial, constitutional stage. In addition, there is a recognizable difference in the society between collective action within the law and actions taken to change the law, with the rules for making decisions being more inclusive in the latter than in the former.

The criteria of the contractarian order do not refer to the genesis and the history of the existing rules. By classifying a system as contractarian, we only mean the operation—the functioning of this order. And although this statement has moral and ethical content, this support is rather limited in scope. An example taken from the field of market exchange may serve in this regard: Before making a transaction, Mr. A has ninety-three apples and forty-three oranges, and Mr. B has two apples and four oranges; after the exchange, Mr. A has ninety apples and forty-four oranges, and Mr. B has five apples and three oranges. The limits of the ethical or moral justification of this transaction amount to the fact that both sides have gained by means of this commercial operation. It does not follow that the distribution of resources before or after an exchange is valid or justified by the benefit to the economy or
society. Both participants gain in the exchange, but this does not mean that the new order is better.

Buchanan emphasizes that his goal is not to extend contractual criteria beyond this limited application, namely the analysis and evaluation of the functioning of the existing political and legal rules. Nor is it his intention to derive conclusions regarding the whole political structure of a democratic state, yet this is precisely the goal of Rawls’ approach. Buchanan, as he claims, places a more modest and less ambitious task here, although from a different perspective it has a wider program than Rawls, who does not take into account the various types of decisions and changes that may occur as a result of alternative rules.22

He agrees with Anthony de Jasay in this respect that politics is the generation and enforcement of collective choices and, as such, is a tool of immense power.23 He realizes that while some options beneficial to a certain group are always implemented in a collective choice, their enforcement can take place voluntarily and peacefully or can be based on coercion. However, the concept of a politics that does not resign itself from violence, one that destroys the freedom of the individual, can only be defended by the previously agreed unanimous decisions. Thus, despite their aforementioned differences, Buchanan and Rawls, as well as other contemporary contractarians, are united in their rejection of nonindividualist criteria for the normative assessment of policy. They also express their unwillingness to interpret politics as solely comprising an arena for the clash of conflicting interests.

**CONCLUSIONS**

To conclude, it is worth noting that contractarianism is not the only position that has advocates from among the scholars of the theory of public choice. Russell Hardin, in his article *Contractarianism: Wistful Thinking*, provides a critique of contractarianism and weighs the strength of the argument behind the appeal to the social contract in political and moral philosophy. He supplies the following arguments: (1) the scope of political and moral philosophy is considerably broader than the theory of the social contract; (2) the agreement is not enough in itself to create laws or entitlements (the normative argument); (3) the agreement may not be connected with the motive of putting one’s house in order (the explanatory argument); (4) the situation of agreement between real individuals brings with it valuable information while a hypothetical contract requires this information to already be given before the process of agreement and attaining consensus may begin.

According to Hardin, contractarianism that appeals to the social contract is a marginal trend in moral and political philosophy, a kind of wishful (wistful)
thinking. He supplies the concept of Buchanan as an example, although his allegations seem to relate primarily to the contractarian theory of morality of David Gauthier. After all, since he does not create contractarian and rationalist ethics but only uses the social contract to justify politics as a field of collective action and operational rules, Buchanan avoids these difficulties. Thus, Hardin’s allegations about his concept are not properly applied, with the possible exception of the third accusation since he recognizes that the unanimous acceptance of the constitution by its citizens is a precondition of its legitimacy. Yet Hardin himself and the theoreticians of public choice who refer to Humean philosophy understand the social contract in a traditional way and thus emphasize its conventionality. Therefore, in this respect, the theory of public choice is far from uniform, and the dispute between these positions is ongoing.
Twentieth-century liberalism is often regarded as a political philosophy that is free of values. In light of this, within communitarian circles, allegations were formulated that individualism and the vision of an individual isolated from their community which are present in liberalism effectively prevented it from creating a theory of values. In fact, modern liberal theories often avoid thinking about the problem of values, replacing this concept with that of preferences (which means both the act of choosing and its result), but this does not mean that liberalism is devoid of a theory of values. The conviction about the axiological neutrality of liberalism seems to be wrong because one of its variations—the theory of public choice—is not only based on assumed values but also accommodates their formal and procedural evaluation, as well as determining preferences in terms of their content.¹

In liberal political philosophy, all considerations of the actions of individuals are based on the assumption that the choice is made by an autonomous individual. This leads to the question: Who chooses and what do they choose? Liberals answer this question by stating that the individual sets goals and values defined as preferences, which can mean both the selection of activities and procedures and their results.

From the time of Aristotle, an action is considered to be rational if it leads to the intended goal. The ancient philosophers, up to Saint Augustine, answered the question about the ultimate goal of human action as being the attainment of happiness, yet they understood this in different ways. Generally, it was agreed that it was the result of the right choices and, to some extent, circumstances (fate). In keeping with the Renaissance spirit of freedom, Niccolò Machiavelli tried to go beyond this determinism of destiny, claiming that man can sometimes change an unfavorable fate through his actions.

Chapter 14

The Axiology of Public Choice
In the modern era, the idea of the autonomy of the individual arose, according to which man himself makes choices, and according to this concept as it was shaped in the writings of modern political philosophers, goals are not given to the individual but determined by man. Philosophers belonging to this preliberal tradition were opposed to determinism and certainly its extreme positions. In Locke’s philosophy, although the law of nature is an objective order that individuals should discover in order to shape individual and collective life and achieve happiness, it is up to them to choose whether to discover these principles and whether they will adjust to them. This way of thinking continued in the Enlightenment, although the notion of the law of nature changed, and in Smith’s works (while still recognizing the natural order), the concept of a man acting in his own interest emerges, which in the tradition of classical and economic liberalism is defined as prosperity and is what utilitarianism termed utility.

The concept of classical liberalism assumed that individual well-being somehow automatically transforms into collective well-being without the participation of the state, whereas in various strains of modern liberalism, the problem is considered with regard to whether it is only material prosperity and whether it should be provided by the state. As early as in the era of German Enlightenment, the theme of the role of the state in providing prosperity to citizens appears, understood not only as material wealth. In the British liberal tradition we can trace this in the writing of Mill, where he proclaims a utopian vision of a state that provides happiness to its citizens, just as they themselves understand it to be.

On the basis of this concept, however, it is difficult to reconcile utilitarianism with individualism. In Mill’s philosophy, the choosing individual strives to attain individual happiness, whereas the state appears in the program of classical utilitarianism as a provider of utility for individuals in a standardized and unified form. A caricature of this concept was presented by Aldous Huxley in his anti-utopian vision of society contained in *Brave New World*. The assumption adopted in utilitarianism about the possibility of the standard determination of individual utility has become the reason for the rejection of this philosophy by the leading representatives of twentieth-century liberalism, Rawls and Nozick; this criticism is also discernible in the theory of public choice, which follows classical liberalism.

**INDIVIDUALISM AND NORMATIVE PUBLIC CHOICE**

The theory of public choice is rooted in individualism: the individual defines his goals and utility. However, there is a problem: How do we move from individual utility to collective utility? It seems insurmountable as part of the
theory of social choice; Arrow has shown that if we assume that an individual has a certain system of values, it is impossible to build a model that in a democratic way—by the majority principle—will set collective goals. Following this discovery, disputes arose among the theoreticians of collective choice between representatives of two branches: social theory and public choice theory, and the creator of the latter—Buchanan—decided that this problem can only be solved on the basis of public choice theory, not by considering the rationality of collective decisions but by taking unanimity as the criterion of choice.2 This applies to constitutional choices that define the fundamental laws in the state as contained in its constitution. Other issues related to the current functioning of the state are settled by means of post-constitutional choices, where the rule of the majority applies due to the effectiveness of its decision-making process.

Perhaps the axiology of the theory of public choice has some attributes of relativism, yet voting in this concept does not concern ethical values but rather political goals. It assumes the objectivity of certain values that are inherent in Western culture, such as freedom, democracy, and human rights, as having a cultural and political character. It should be added that freedom is understood here as a choice of limitations, rules governing human behavior, and is described as procedural, as the selection of preferences, and it is therefore impossible to determine or define the results of the collective choice in advance.3

In the theory of public choice, the freedom of the individual is the undisputed value safeguarded by the liberal-democratic state. The ideal of the political system is not the rule of parliamentary majority, that is, parliamentary democracy, but a constitutional republic in which freedom of choice is always a choice of constraints, of constitutional and legal rules. We live in a state constructed by ourselves, and in this sense we can say that individuals choose the state in which they live. Striving to maximize utility (happiness) is not contrary to constitutional choices, because the individual in these choices due to the accompanying uncertainty, rises to the level of activities that go beyond self-interest.4

In post-constitutional choices, the self-interest of the individual is fully recognized and may obscure the implementation of an objective that is beneficial to the community. Yet in this case, the theory of public choice presupposes the existence of values that influence the public (political and economic) choices of individuals. This is primarily about the existence of a cultural environment, religion, Western civilization and—within its framework—a political and economic culture. It consists of values within which we communicate and act, and make specific decisions. In this culture, human rights do not exist as absolute content but are determined in the course of a social contract, and their content is historically variable. It also assumes an economic concept
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of rationality and human nature: man chooses utility as he understands it. According to Buchanan, modeling collective choices by submitting individual utility and applying the majority principle by Arrow is a mistake because in reality, no collective choice can be considered as being settled by voting unless relative unanimity is achieved.5

In the theory of social choice, one of its former supporters—Sen—also joined the attack, stressing that on the basis of this concept, it is impossible to separate procedures from its goals and that it presupposes a false concept of man and the rationality of action, because people are not always guided by their own interests. He emphasized that a broader range of motivations should be taken into account in human activities, first and foremost commitment, and not just self-interest.6 That the concept of economic man (homo oeconomicus) is at odds with our colloquial experience was already noted by Francis Edgeworth at the end of the nineteenth century. Sen, however, recognized that this concept not only constitutes a theoretical simplification that does not exhaust the description of human nature, but it is also one that distorts reality. Comparing the two varieties of the theory of choice, he concluded that the advantage of public choice theory is its empirical nature: goals are defined here by empirically testing preferences, not by building mathematical models that are detached from reality, as is the case with the theory of social choice. He rejected Buchanan’s thesis about the purely procedural nature of collective bargaining, and he said that it could only refer to constitutional choices because in making more detailed decisions regarding matters of modern life, it is necessary to take into account the consequences (purposes) of our choices.7

EMPIRICAL RESEARCH OF VALUE SYSTEMS

The application of the empirical theory of public choice has recently featured in research into value systems (European Values Study).8 The results, obtained in various centers around the world and on a large scale, undermined current colloquial intuitions and, at the same time, confirmed the validity of Sen’s critical arguments. It transpired, for example, that citizens of the United States and Switzerland value work and the ability to influence political decisions over increasing wealth, something strongly at odds with, and constituting a rejection of, the vision of human nature in terms of homo oeconomicus.

The general theoretical conclusions stemming from these studies confirm the common perception that the concept of happiness as the goal of action is culturally conditioned and changeable. Thus, the error of utilitarianism is to identify happiness with material prosperity because other values are equally important in a person’s life. These studies, conducted both by the theory of
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public and social choice, are an expression of the conviction that collective goals cannot be theoretically determined, nor can they be imposed arbitrarily; the results of empirical research serve as information about the dominant preferences of individuals in a given society.

In contemporary liberalism, the eternal philosophical questions return. Does man have freedom of choice? Can we shape our own life through our decisions? Can we shape the environment in which we operate and create political and economic institutions according to our intentions? The theory of public choice answers all these questions in the affirmative of the tradition of liberalism that arises from Enlightenment individualism and assumes the freedom of an active individual and that it can shape both their life and social, political and economic institutions rationally, in other words, according to their own intentions (goals). The state has no particular duty to ensure that every citizen is happy; thus, determining the shape of a state that will ensure a happy life for citizens is not the task of liberal political philosophy. The goal of the theory of public choice is to define the requisite criteria for assessing existing regimes, which will allow them to be hierarchized by those choosing. This normative individualism so typical of Buchanan’s conception, however, must be distinguished from the moral individualism that characterizes the theory of public choice. A definition of the latter is supplied by Denis Mueller:

Moral individualism assumes that all normative judgments concerning human action and morality are made in reference to the extent that these actions allow individuals to achieve their interest, where these interests are defined by the individuals and taken as given.9

From normative individualism, one can discern a postulate concerning the democratic and constitutional structure of the state, and the determination of the features of a good model of the system, or one which provides happiness, should be left to its citizens to resolve. In turn, this moral individualism indicates that when designing the institutions of this state, we should accept individuals as they are, together with their needs and interests.

Happiness, however, is also the subject of global empirical research under the umbrella of happiness research, in which it is not about developing a theoretical model of a happy state but about examining the conditions of a happy and satisfying life. The aim of this research is to obtain information that has a significant impact on making ad hoc political and economic decisions. It can therefore constitute a valuable information base for those in power and all those involved in making collective decisions.

Economics is often criticized for adopting an incomplete picture of human motivation. According to the standard conception, people are rational maximizers of utility, which means that people most frequently care about
material prosperity and the improvement of living conditions.\textsuperscript{10} Despite this opinion being commonplace, there is empirical evidence that confirms the equally widespread belief that money does not give people happiness, and certainly does not make them happier. Research conducted on happiness has shown a positive relationship between subjective happiness and having a stable job, low inflation, and a successful family life; however, a relatively new subject is the impact of existing political institutions on the happiness of individuals.

This problem emerged in research conducted by Swiss scholars from the public choice school. Bruno S. Frey and Alois Stutzer from the University of Zurich studied a group of 6,000 Swiss citizens and asked them the following question: How satisfied are you with your life as a whole these days? In their conclusions, they confirmed the earlier research, which suggested that a stable job has a greater impact on feelings of happiness than increased income.\textsuperscript{11} However, perhaps their greatest finding was the discovery of a relationship between the scope of direct democracy and happiness, where a one-point growth in the democracy index correlated with as much as a three-point increase on the corresponding happiness scale. It was a stable effect that was equivalent to that of moving from the lowest to the highest group of taxpayers.

The scholars also asked the question of what aspect of democracy made them the happiest: the result (e.g., a better government) or the electoral process itself? Both Swiss citizens, who have the right to vote in referenda, and foreigners, who do not, took part in the study. It emerged that the impact of democracy on foreigners was insignificant, while participation in political life had a tremendous impact on the happiness of the Swiss-born participants, meaning that being part of the electoral process itself was a crucial factor in their happiness.

Another study on happiness and life satisfaction (these are not identical notions, even though they are frequently regarded as such), and together comprise subjective well-being, was conducted globally over the course of many years by Ronald Inglehart. It revealed a close connection between the degree of political freedom and democracy enjoyed by the inhabitants of the country and their happiness.\textsuperscript{12} It noted that feelings of happiness in the countries of Central and Eastern Europe had risen in recent decades (with the exception of Hungary) while the general level of happiness in more developed European countries and America had remained unchanged for many years. It transpired that in the new democracies, the transition from a communist to a democratic system, even when it had been accompanied by a temporary worsening of their material situation, had led to a growth in happiness. In countries where democratization had gone hand in hand with the improvement of the material situation, life satisfaction also increased,
while in countries where the economic situation had worsened, the increase in satisfaction was correspondingly small, and the sense of happiness was apparently treated as something that other, noneconomic factors had a significant impact upon.

The economic significance of these studies consists of the fact that they alter the meaning of the concept of utility, challenging the utilitarian conviction that utility is the same as prosperity. Therefore, most of the new trends in economics are seeking support in psychology. The school of behavioral economics emerged, in which the notion of rationality of choice (maximizing well-being) has been abandoned in favor of the consideration of the subjective and irrational elements in decision-making.\(^{13}\)

The philosophical significance of these works rests on the fact that they question utilitarianism as a theory that allows us to measure individual utility in the typical categories. For inspiration, they turn to Smith’s theory of moral sentiments in order to emphasize the subjective character of experiencing values, which people appreciate and see as being to their benefit.\(^{14}\)

It is also believed that these studies may be of political significance, as they constitute an information base for decisions taken by the government in terms of socially important goals. For example, Frey and Stutzer’s research shows that the so-called misery index, illustrating the relationship between unemployment and inflation, changes so that the level of happiness decreases more as a result of increasing inflation, while the unemployment increase reduces it to a lesser extent. Therefore, in times of recession, in an attempt to counteract the crises, the government should avoid a significant increase in inflation and instead allow unemployment to increase. The results of these empirical studies turn out to be of use in making current public decisions.

Will politicians, however, take these discoveries into account? According to the theory of public choice, decisions in a democratic state are made by politicians with the intention of winning the next elections and attaining the support of the electorate. Thus, when those in power make public choices that concern all citizens or large social groups, they must take into account their happiness and sense of satisfaction, their satisfaction with life, because only then will citizens make positive assessments and vote on their basis. It transpires that, apart from purely economic factors and improving the standard of living, it is also important to allow citizens to participate in government, thus increasing the scope of direct democracy and freedom of choice; therefore, rulers should support not only the development of democratic institutions but also the growth of various forms of citizen participation in a democratic process. The concept of the government adopted in the theory of public choice does not assume noble intentions on the part of the government or that it is a benevolent despot who cares only for the common good. Like ordinary
citizens, politicians, while striving for their own benefit, must also take care of the electorate’s satisfaction, and research on the determinants of happiness helps them to set goals. These goals should be taken into account by persons that have an influence on public life and who are responsible for making important decisions in a democratic state.
Part IV

GLOBAL JUSTICE IN A DEMOCRATIC WORLD
Consideration to the problem of multiculturalism is one of the most important issues in political philosophy for any contemporary liberal democracy. Pluralism—a multitude of cultures and their coexistence within one state or community of states—has been the subject of theoretical reflections in the works of political scientists, philosophers, and sociologists. In particular, the subject of this research has been the nature of the modern liberal-democratic state that protects the freedom of the individual and the rights of minorities, and is seeking institutions that ensure the peaceful coexistence of various social groups.

In this chapter, however, empirical issues, such as the policies of contemporary democratic states toward minorities, and purely theoretical issues related to the understanding of human rights or minority rights are not considered thoroughly. Reflections on this subject already constitute a broad area of study within political philosophy, inspired in part by the work of communitarians who, through their critique of the assumptions of liberalism, induced representatives of modern liberalism to tackle the issues of cultures and nations. Communitarians were the first to draw attention to a significant drawback of liberalism, namely its failure to address or incorrectly resolve problems related to the functioning of cultural minorities within the democratic state.

Outlining a debate that has been ongoing since the 1980s, Will Kymlicka states that the communitarians attacked the ideal of equality in a pluralistic democracy, based—in accordance with the Marshall theory of citizenship—on the policy of improving the economic situation of the most vulnerable groups in society, which were often cultural minorities. They emphasized that this program, implemented mainly in the United Kingdom, consisted of adapting minorities to the dominant culture and led to their denationalization,
depriving them of their own language and culture. Currently, however, the view prevails that the liberal-democratic state should depart from this formal understanding of equality and protect the cultural uniqueness of a given group. Perhaps there is always a dominant culture in a given area and in the language and institutions of a given country, but this need not lead to the negative evaluation of the culture or language of smaller groups.¹

Kymlicka’s position was recognized as proposing a certain model for solving the problems that arise within a multicultural, democratic state. However, it encountered opposition in the form of various concepts of communitarianism, which state that a liberal approach to this problem was fundamentally wrong and contested the ability of a liberal state to properly arrange relations between ethnic or cultural minorities. The second wave of criticism came from the feminist trend, in which both Kymlicka’s views and liberalism in general were attacked as a political philosophy that did not take into account the problems related to the unique situations of women in the modern world.

In this context, a special place should be reserved for the position created by Alasdair MacIntyre, who rejected liberalism in his work *After Virtue* (1981) together with the whole of post-Enlightenment thought (and its main proponent, Nietzsche), in order to propose in its place a return to the tradition of Antiquity—to the philosophy of Aristotle and his conception of man, who realizes the principles of the common good from within the framework of the *polis*. This was modified slightly in his later work, *Whose Justice? Which Rationality?* (1988), where MacIntyre, based on methodological considerations and historical analysis, undertook to answer the issue of the pluralism of traditions and the diversity of ways of thinking in the Western cultural and civilizational framework. He states that the liberal program, assuming the peaceful coexistence of this diversity of cultures, was doomed to failure since the democratic-liberal state is unable to take the necessary steps to ensure the peaceful coexistence of various cultural and value systems.² Although these arguments mainly referred to the problems of tradition and culture of the nation-state, they are now also appearing in the discussion of the political reality of the early twenty-first century, in relation to the problem of the mass migration of people from the south to the north, a discussion that has centered on the mutual relations between states and also entities that comprise larger political structures such as the European Union or the United States.

According to this interpretation, the main issue discussed by MacIntyre in the book is not a critique of post-Enlightenment liberalism but the problem of multiculturalism. He tackles issues that have been vividly discussed in contemporary liberalism, presenting them in the light of his own philosophical conception and utilizing a language very different to that which dominated the discourse in contemporary analyses. He considers the coexistence and
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conflict of traditions, analyzing this problem on both an epistemological and a political level, while at the same time, making normative postulates.

On the one hand, it is difficult to accept the author’s thesis that liberalism goes against all previous traditions and places itself on a meta-level for considerations, as an arbitrator capable of evaluating other positions, since the liberal tradition exists and forms the basis of a modern democratic state. It also seems that the liberal-democratic state creates the best conditions for multiculturalism when it is understood—as Kymlicka put it—as the coexistence of many value systems in a given area. On the other hand, this problem, considered in the global aspect, makes us question the belief in the universality of democracy as the only possible political basis for the peaceful coexistence of a multitude of cultures and raises doubts of the universal character of democratic ideas. While we might not accept all of MacIntyre’s theses, his arguments against liberal democracy constitute the inspiration to take a fresh look at the problem of the universality or particularity of the idea of democracy in the contemporary world.

MACINTYRE ON LIBERALISM AND DEMOCRACY

In describing liberalism, MacIntyre maintains that it is a concept that arose from within the confines of the French Enlightenment, one which was critical of all traditions and religions and which based itself on a limitless trust in human reason. Liberalism, according to him, is also characterized by an atomistic vision of the individual detached from society.

This last argument, derived from the anti-liberal philosophy of Karl Marx, crops up again in the twentieth century in the thoughts of the communitarians, above all in the famous criticism of the liberal self as made by Sandel, and one that is also present in MacIntyre. In their opinion, man does not exist outside of society, detached from a culture and tradition, and the free-market social order differs from tradition. Liberalism is dominated by thinking in terms of the market and utilitarian values; it lacks the idea of the common good. Having outlined this somewhat simplistic picture of liberalism, MacIntyre overexaggerates the Enlightenment style of thinking, failing to recognize the fact that the beginnings of a modern democratic state were shaped at the beginning of the modern era (visions rooted in Renaissance utopias, the first democratic institutions in England and the Netherlands). Furthermore, the political theories that accompanied these institutions, such as Locke’s, did not juxtapose the individual with society or cultural traditions.

MacIntyre also believes that the liberal social order he questions is expressed most fully by the system of pluralist democracy created by Robert A. Dahl, which he terms polyarchy. According to this theory, individuals who
strive for many goods combine in a community without a unified system of values or an ideal of the common good. The only common good of liberalism is that of pluralist democracy itself, and the main virtue is citizenship. Although MacIntyre recognizes the fact that it is no longer possible to restore the model of Ancient Greek democracy, he postulates—in the name of the fight against pluralism—a return to this tradition that is fundamental to Western culture, with Aristotelianism to the fore. In passing, it is worth noting that he clearly idealizes the ancient polis, and what he sees as a previous unity of moral traditions and convictions never existed in reality.

In the modern world, however, the coexistence of many traditions occurs within the democratic and liberal culture of the West. We can recall historical examples from other systems: a multinational monarchy or a socialist dictatorship, but the popularity of democracy in present times is so great that other solutions are not properly taken into account. MacIntyre makes no attempt to understand the nature of a contemporary democratic-liberal state but insists that diverse traditions cannot coexist within the framework of liberal democracy, ignoring examples of states such as Australia and Canada, which respect the specific character of cultures and traditions of these countries.

The reason for this is probably the fact that he does not use the concept of culture but rather that of tradition: He uses it either in a wider, commonplace sense, where tradition means the same as culture, or in a narrower sense as a tradition of inquiry, where it primarily has an epistemological dimension and is a way of addressing the social world by a given community. Both of these meanings of tradition appear in his work in various contexts. Taking as a starting point the epistemological sense of the concept of tradition, MacIntyre notes the failure of the liberal project to combine many traditions and states to the extent that their members cannot communicate with one another, and liberal democracy is thus a microcosm of conflicting views. He also argues that it cannot cope with multiculturalism: either it will destroy traditions and cultures by unifying them and imposing a common, dominant language or it will drown in interminable debates because a given tradition produces a particular notion of practical rationality and justice, and thus only conflict is possible between different traditions.4

MacIntyre notes that by initially distancing itself from any tradition (in a broader sense), liberalism has actually transformed into a tradition, but it is wrong to say that it is a tradition of pure rationality and theoretical universalism. In fact, this tradition of liberalism is a model of practical rationality and justice developed in the history of modern political philosophy from the time of Locke and Spinoza to that of Rawls, and one that has been implemented as part of a modern democratic state.

The concept of tradition in sociology refers to the cultural content passed down from generation to generation (beliefs, customs, views, norms) or the
process of transmitting such content. Traditions are often identified with culture (Kroeber, Malinowski, Lowie), and terms such as heritage, tradition, or culture are often treated interchangeably in common usage. However, in a narrower sense, tradition is not identical to the whole cultural heritage of a given community but only covers phenomena and cultural content from the past, distinguished by certain social groups or nations on the basis of a specific hierarchy of values being socially significant for the present or future.  

Thus, not all cultural heritage is a tradition but only a part of patterns and customs, and when making choices among them, a judgment is assumed about the value of the transferred element, hence some theoreticians equate tradition with a value system (Shils).  

MacIntyre also seems to share this understanding of tradition when he writes that liberalism as a philosophy of universal rationality cannot constitute a set of values worthy of being called a tradition, since he perhaps does not prize the set of values that are constitutive of a liberal culture, such as individual freedom, individualism, tolerance, and equality before the law. In MacIntyre’s concept, there is also a specific narrowing of the concept of tradition to a “tradition of enquiry,” which means that the people involved in it transform the present in a conservative direction, aiming to either improve or resist it. He claims that the constitutive features of the given tradition, the theory of justice and practical rationality, are incomprehensible beyond its framework, arguing instead for a form of cultural relativism, albeit not in its extreme form. He does not maintain that one cannot be an Aristotelian outside the Greek polis but rather that the principles of justice and rationality proclaimed by the ancient philosopher can be implemented in this day and age, provided that our cultural environment fosters their application and values. MacIntyre therefore allows changes and modifications to take place within a given tradition of enquiry: in his view, tradition is a process in which continuous processing and translation takes place, while no tradition can prove its superiorit or evaluate mutual relations rationally. Thus, multiculturalism in the MacIntyre sense is the problem of the multitude of traditions, their coexistence, and the mutual relations between them.

THE PLURALISM OF TRADITIONS AND LIBERAL MULTICULTURALISM

Distinguishing three main trends within the European tradition—the one initiated by Aristotle and Saint Thomas, that of Plato and Saint Augustine, and finally that of Hume and the Scottish philosophers—MacIntyre contrasts them with the Enlightenment and Enlightenment liberalism, which, in his opinion, does not fit the previous positions and is not in agreement with them because as a pure rationality, it places itself on a meta-level and above all
traditions. Characterizing the relations between traditions, the philosopher uses some meaningful expressions: the incommensurability of concepts, controversy, incompatibility, and agonistic or conflictual relations. There is some resemblance to Samuel Huntington’s theory of the clash of civilizations, but MacIntyre places more emphasis on epistemological issues in his philosophy of culture than on the problems of historiosophy.

According to MacIntyre, it is not possible to agree or externally resolve the conflict of tradition, as liberalism presupposes. As part of tradition, empathy fosters the understanding of a different view and either adapts it to its own tradition or rejects it. In this sense, traditions (and also cultures) are reformable and susceptible to change. One can also question one’s own tradition but one cannot go beyond it and judge it rationally because there is no universal pattern of rationality. Thus, according to MacIntyre, the complete opposite of tradition is the cosmopolitanism initiated by Kant and Reid, currently represented by the liberals and libertarians, Rawls and Nozick. The political theories they created found their embodiment in the state of liberal democracy, in which the phenomenon of the internationalization of language (ways of communication, dates of discussions) occurs, which in turn, causes the death of tradition.

Multiculturalism in contemporary discussions on the nature and functioning of a democratic state largely amounts to issues of minority rights, and not only the equality of political or civil rights but the more complicated nature of the situation of national, racial, ethnic minorities and sexual orientations that are not resolved by the granting of formal equal rights to these groups. There is a perception that consensus can be reached democratically, and the principles of fair agreement can be established by debate or by voting.

MacIntyre’s point that attaining this goal is impossible because these minorities share a common tradition and cannot be unified based on a certain principle of justice does not seem justified, since reaching a social agreement in a given case does not necessarily ascribe its participants with a specific pattern of justice and rationality. As Rawls said, one can jointly adopt a political concept of justice that does not exclude individuals from having their own ethical views.

MacIntyre is also wrong when he claims that deliberation implies a universal pattern of rationality, one that imposes a liberal language and pattern on traditions. The empirical research conducted as part of a global survey proves that the process of increasing rationality that takes place over time is a transition from primitive to more civilized methods of conflict resolution and communication between communities, which does not mean the disappearance or displacement of the specific culture and tradition that characterizes a given community.
NUSSBAUM AND THE FEMINIST CRITIQUE

A critical evaluation of Kymlicka’s position can be found in the statements of philosophers belonging to the feminist trend and are usually associated with the depreciation of liberalism as a political philosophy that is insensitive to the situation of women in the modern world. Women in most societies are affected by various types of exclusion to a greater or lesser extent. According to feminists, liberalism does not notice or disregard it and considers the factors that cause this exclusion to be insignificant. As Alison Jaggar states, “The liberal conception of human nature and of political philosophy cannot constitute the philosophical foundation for an adequate theory of women’s liberation.” In a later paper, written jointly with Theresa W. Tobin, Jaggar repeats this negative assessment of liberalism from the global perspective of the contemporary multicultural reality. As they put it:

Social inequality and cultural diversity are inescapable features of our world. Their conceptual richness and variety of perspectives provide valuable resources for moral thinking but they also complicate moral reasoning, especially reasoning among members of differently situated social groups. When cultural values are diverse, different groups may prioritize similar values differently, the values of one culture may not have obvious correlates in another, and different forms of reasoning may be taken as authoritative. Inequality may allow members of powerful social groups to repress the moral views of the less powerful by ignoring, dismissing, or silencing them.

Women, whose interests escape the general liberal classification, constitute such a marginalized group. Nussbaum also draws attention to this, writing that this is a fundamental drawback to liberal political philosophy when it is applied to the policy of a democratic state with regard to ethnic or cultural minorities. In her opinion, in his essentially prudent attempt to justify the liberal stance toward minorities and its ability to deal with conflict situations, Kymlicka does not envisage a possible conflict of values in a multicultural state. He postulates the need for respect for the specific customs and local rights recognized by minorities, but in a situation where there are gross violations of human rights, he believes that federal government intervention is required. However, the very concept of the group used by Kymlicka is unclear in relation to women; moreover, we usually do not deal with a gross violation of human rights in this case but with long-term deprivation and exclusions that have been determined by the local tradition.

Sen addresses a similar problem, where he writes that the situation of women in many societies is a result of them limiting their own life opportunities as they live and are raised in a culture that limits their ability to
choose them. Sen regards this as one of the most extreme examples of social inequality, where the inequality in a society is maintained and reinforced by those which it affects. Contemporary feminist philosophy terms such people as being excluded on the basis of their “adaptive preferences”; according to Serene Khader, “People with adaptive preferences experience deprivation partly as a result of their own behavior or desires—behavior and desires that have been shaped by unjust social conditions.”

This applies above all to multicultural and multireligious societies, where tradition is often an element that determines severe situations of the denigration and exclusion of women. In such societies, granting women the right to vote or generally defined human rights, as postulated by liberalism, does not solve these specific problems; thus, drawing attention to these specific situations is a valuable achievement of feminism. Nussbaum rightly emphasizes, however, that this does not mean the rejection of liberalism but rather adopting the postulate of making the necessary changes and adjustments to the liberal political philosophy so that it will still be capable of effectively defending the interests of women. From Nussbaum’s perspective, liberalism is a political philosophy that places human dignity in the center of attention, and proclaims anti-racism, religious tolerance, and equal opportunities for representatives of various social strata. Liberal feminism, however, does not favor the interests and rights of women over the interests of other marginalized groups. It seems, therefore, that the liberal doctrine remains the best political orientation, also from the point of view of cultural minorities and excluded social groups, although it probably requires adjustments and additions in order to counteract various types of social inequalities.

MULTICULTURALISM AND DEMOCRACY

The multiplicity of cultures contemplated in contemporary political philosophy is an obvious fact, and pluralism and the diversity of value systems are universally accepted features of a democratic society. Liberalism is not axiologically neutral, but among the values it proclaims are tolerance and political freedom to be realized in a democratic state. These values have evolved in European culture with the emergence of Western democratic systems, thus liberalism and democracy are closely related, while in liberal theories such as that of Rawls, political freedom takes precedence over other social values and can be fully realized in constitutional liberal democracy.

Just as the Aristotelian tradition was shaped by the Greek polis, the modern liberal tradition as it appears in the works of Hobbes, Locke, Spinoza, Smith, Constant, and de Tocqueville is one that is connected with the social contract that forms the basis of the modern democratic state. The evolution
of European and American liberalism, a process that has been ongoing for several centuries, proves that democracy is the optimal environment for liberal culture, an environment in which values such as tolerance and political freedom can develop. They form the foundation of the liberal-democratic tradition and not—as MacIntyre believes—an abstractly understood rationality. Democracy, however, turns out to be the most capacious political system enabling the cultivation of the multiplicity of values and the coexistence of various traditions and cultures. Perhaps the political system does not have to be fully democratic for minorities to coexist peacefully within it, but it must be based on the cultural foundation of liberal democracy. The example of the policy that Russia pursued toward the end of the twentieth century in relation to Chechnya or Georgia only confirms the thesis that there must be an environment of democracy, culture and liberal tradition so that an agreement between different traditions and cultures is possible.

The modern concept of multiculturalism includes not only national minorities and ethnic groups but also social groups linked by a common system of values or those which find themselves in a similar situation. They can also be treated as interest groups, as is the case in the theory of public choice, and interpret the fight for group rights as being in the interest of local leaders who often want to consolidate their power within a given minority. However, the theory of interest groups formed in the 1960s, exploring the possibilities of achieving social consensus, does not take into account the diversity and specific traditions or value systems of individual communities. Therefore, in more recent liberal political philosophy, it is not only examples of economic inequalities that are analyzed, but above all, inequalities and a policy of recognition that is aimed at counteracting them and affirming group differences. Different civil rights are adopted depending on the group culture, and this is no longer just about tolerating cultural differences but also about ascribing them with a specific value. It is believed that forms of public recognition of minority cultures and language are not contrary to the principles of liberal democracy, including individual autonomy.

The ongoing debate on multiculturalism within liberalism today also applies to the determination of governmental policy within a given country toward particular groups, with the idea of neutrality being replaced by the concept of distance to cultures and communities living in a given area where different religions and views coexist. In this context, an important problem that needs solving is the assessment of the justice of claims made by individual minorities and social groups in particular countries.

Thus, the theory of democracy is still developing and includes changes in social life that manifest themselves in the form of a multitude of groups and their rights and claims to recognize cultural specificity. This process takes place within the framework of liberal democracy, which seems to be the
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correct environment for multiculturalism also understood in the MacIntyre sense as a multitude of traditions. For this reason, the criticism of liberal universalism in his works regarding the liberal-democratic state already seems outdated, while his defense of traditionalism seems close to the ongoing research in the field of values in the world in the works of Ronald Inglehart.

CULTURE AND DEMOCRACY IN THE WORK OF RONALD INGLEHART

The American sociologist and cultural researcher Ronald Inglehart, analyzing the relationship between culture and democracy within the framework of the World Values Survey, formulated two theses. First, economic development is associated with cultural changes, moving away from absolute social norms that have been derived from a tradition toward a greater degree of rationality and tolerance. Second, culture depends on historical conditions, and the fact that individual societies were rooted in different Protestant, Catholic, or Orthodox traditions creates cultural spheres with different value systems that do not disappear as a result of economic development.

The World Values Survey encompassed dozens of countries from around the world. On its basis, Inglehart formulated another thesis, namely that societies differ in terms of their relationship to certain group values, either those conducive to their survival or values conducive to freedom of expression, with societies in which the latter dominate being easier to adapt to democracy.

According to Inglehart, global economic development leads societies to gradually move away from values that favor survival to values that favor freedom of expression. To some extent, this confirms the fact that democracy is more easily rooted in rich societies. However, the above research also shows that this relationship between values of expression and democracy is very strong, regardless of the economic situation, thus culture has a greater impact on democracy than economics. Therefore, while the existence of values conducive to freedom of expression in a given culture is the basis for the emergence of stable democracy, a high level of economic development does not automatically lead to the choice of this system.

Similar conclusions can be drawn from research on the sense of happiness among citizens of different nationalities (happiness research). They show that at the turn of the twentieth and twenty-first centuries in the countries of Central and Eastern Europe, there was a clear increase in the individual sense of happiness with an unchanged level of satisfaction with life in the democratic countries of the West, with Ukraine being the country where this indicator reached its highest value immediately after the “Orange Revolution.”
This proves that democratic values, especially political freedom, have a
greater impact on an individual’s happiness than the improvement of their
material status.\textsuperscript{18}

In light of the empirical research on values, multiculturalism appears as a
problem of modern democracy that can be considered on two levels: relations
within a democratic state or globally, in connection with the issue of the uni-
versality of liberal democracy. The views contained in \textit{A Theory of Justice},
as well as Francis Fukuyama’s famous prognosis on the end of history, con-
tributed to the popularization of the belief that democracy is universal and can
be introduced in any country. Following Inglehart’s research, however, this
belief has been questioned, and the recipe of “make democratic institutions
and live happily ever after” is far from universal; it is not always possible to
establish democracy and it will only be successful where cultural factors play
an important role. These studies to some extent confirm the negative opinion
of MacIntyre about the universality of liberalism, or rather, this variety of
liberalism, which places pure reasoning above culture and tradition.

It therefore transpires that the universal model of liberalism criticized by
MacIntyre is not one that works at the international level, and liberal politics
promoting a specific model of democracy is not always right. On the one
hand, liberals are right to say that economic progress favors the universal
values of freedom and tolerance, and also encourages nations to move away
from cultural absolutism; on the other hand, democracy needs to be based on
a tradition and culture in which values are conducive to expression. According
to Inglehart, it is difficult to draw general historiosophic conclusions
about the further development of civilization from the above studies; one can
only make assumptions. And these do not let us claim either the inevitable
clash of civilizations in the future (as Huntington claims) or the ultimate
dominance of democracy in the world (as Fukuyama argues). From these sur-
veys, only a moderately optimistic forecast emerges, one that argues for the
gradual expansion of rationality and tolerance in societies on a global scale
that favors their peaceful coexistence.

These views are similar to those of Rawls in \textit{The Law of Peoples}, where
he moves away from universal liberalism and accepts that different political
systems that exist in the world may coexist with liberal democracy in the
West, providing they respect certain fundamental principles and, above all, human rights.

The shift in Rawls’ views reflects the widespread conviction today of the
twilight of liberal constructivism in international politics. Contemporary
political liberalism is not about applying one theory and a particular model of
democracy to reality, but it is minimalist and based on knowing and respect-
ing the diversity of different cultures, and accepting their attitudes and values.
Even though liberal democracy is not a universal creation derived from the
universal theory of rationality but rather a historical phenomenon rooted in Western culture and tradition, the values that it proclaims—political freedom and human rights—are now widely recognized in the world, and they can also be implemented under other political systems based on the specific culture and tradition of a given community.
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Liberalism and Democracy in the Age of Globalization

The concept of globalization first appeared in economics, from where it was transferred to philosophy and political theory as well as to the philosophy of culture. In economics, globalization means the expansion of the market, and with it, the scale of economic processes and phenomena related to the disappearance of national markets for international exchange and mainly concerns the phenomenon of competition on the world market. In political philosophy, globalization has usually appeared in the context of the processes of the unification of Europe and the transformation of nation-states into the great political organism of the European Union in recent decades; concerns were expressed regarding political and cultural homogenization, the disappearance of national traditions, and excessive restrictions on individual freedom (economic and political freedom), which may result from EU legislation being harmonized. On the global level, globalization processes were considered in the context of the issue of the inevitability of democracy, its universal dimension, and political consequences, which would consist of the aim of the implementation of a world state.¹

The twentieth century will go down in history as the century in which liberalism and democracy finally triumphed after, on the one hand, unsuccessful attempts to implement rational, utopian projects of an ideal communist society, and on the other, numerous manifestations of political irrationalism and barbarism. The first half of the century was marked by totalitarian tendencies in politics, while economics demonstrated the superiority of the planned economy over the free market. In practice, these principles were implemented by socialist states, and also in capitalist countries such as the United States during the Great Depression and in England in the 1940s, where state interventionism was introduced to a large extent. According to popular left-wing opinions, liberal democracy was regarded as a nineteenth-century
The relic that was soon to slide into oblivion. However, this did not come to pass. The turn to the ideals of liberalism came after World War II: first the Federal Republic of Germany under Ludwig Erhard, then Great Britain under Margaret Thatcher, and the United States during the presidency of Ronald Reagan implemented liberal economic policy.

In political theory, however, the debate on liberalism and democracy, which had been initiated at the turn of the 1950s and 1960s by R. A. Dahl and A. Downs, developed in the 1970s following the publication of the seminal books of Rawls and Nozick, which are today regarded as classic works in the field. The triumph of the liberal-democratic trend was sealed at the end of the century by the emergence of new democracies in the countries of Central and Eastern Europe. This political success and the overthrow of totalitarian regimes in Europe strengthened the significance of liberalism as a political theory that still had the power to inspire and was able to influence the shape of political systems and the course of political events. It turns out that liberal democracy remains an attractive and far from outdated political model. The power of the democratic ideal was so great that, according to calculations given by Dahl at the end of the twentieth century, the number of democratic countries constituted nearly one-third of all countries in the world.

In the last thirty years of the last century, there was a significant development in the field of political philosophy, especially in terms of research on the nature and varieties of liberalism and democracy. New concepts emerged regarding the mechanisms of the functioning of democracy: the theory of interest groups and the theory of public choice. Fukuyama’s popular theory of the global rule of democracy meant that in the democratic world, there was quite a common belief that humanity would soon enjoy a golden age ushered in by liberal democracy. The beginning of the twenty-first century, however, shook this utopian conviction and awoke governments and citizens of Western societies from their stupor. The events of September 11, 2001, revealed the existence of enemies of liberal democracy, this time no longer proclaiming the advantages of totalitarianism over individual freedom but interpreting the attack on the World Trade Center in New York as the manifestation of a conflict between the civilizations of the East and West.

THE IDEA OF WESTERN CIVILIZATION

The clash of civilizations which this attack was meant to initiate had already been predicted in the visions of the catastrophes of the late nineteenth and first half of the twentieth century. At the time, it was described mostly as a threat from barbarians who wanted to destroy Western civilization. In addition to the works of Ernest Renan, Herbert George Wells, and Oswald Spengler,
mention should be made of the literary works of the Polish writer Stanisław I. Witkiewicz who dealt with the threat posed by Asians or Chinese, who were particularly feared at the time. However, the conflict that unfolded before our eyes received a slightly different interpretation. Contrary to the intentions of those who unleashed it, the West did not take the opportunity to undertake the mission to finally exterminate evil in the Islamic world. The ongoing war on terrorism began, together with the plan to establish democracies in cultures where it had not previously been present. The goal was presented in such a way that it was not about waging war with an evil incarnate in a specific state but rather about a battle for international political and economic principles, and thus a war in defense of the ideal of liberal democracy.

Following the famous formulation of Huntington, however, one can also look at this conflict as the clash of two civilizations, one that has now taken the form of a conflict between different languages—the civilized world and barbarism—without using these terms in a loaded sense. The language of barbarity attempts to impose war in the name of metaphysical principles: good and evil, Satan and true religion, God and Antichrist. The language of contemporary Western civilization is the language of human rights, tolerance, and the principles of liberal democracy, so communication takes place within the framework of ethical and political discourse. We are perhaps dealing here with a modern version of the Tower of Babel, with the need to interpret events so that they are understood and accepted by a recipient who can only grasp their meaning if they are subjected to appropriate cultural interpretation.

It is also worth noting that there is a dispute that has recently arisen within liberalism. The reluctance to use the concept of “Western civilization” among some supporters of liberalism is so great that instead it has been proposed to speak simply of a civilization that is opposed to barbarism, without pointing to particular values or emphasizing the superiority of Western civilization over the rest of the world. In turn, another strand of liberalism considers the West as a unique political and cultural phenomenon, where the progress of civilization has reached its apogee; they believe that other nations and cultures should follow the same path to attain similar achievements.

The liberalism of the second half of the twentieth century attempted to transcend the dilemma of nontranslatability or lack of intercultural communication and is presented as a theory of universal importance, primarily in the work of Sen. Similarly, according to Rawls, all peoples and cultures can adopt the principles of the liberal-democratic system or coexist peacefully with nondemocratic states, provided that the latter respect human rights. These rights are the foundation of peaceful coexistence, which means that one cannot tolerate a country or group that does not respect them. Rawlsian political theory, therefore, does not assume neutrality toward totalitarian regimes and justifies taking international actions to defend human rights.
Contemporary liberalism as represented by Rawlsian theory is most often defined by three concepts: universalism, neutrality, and pluralism. Universalism means that collective values and goals transcend the limits of a specific national or religious community. Neutrality is a denial of the view that they are associated with a certain concept of the common good; pluralism, on the other hand, recognizes multicultural values and goals as equal and attainable by citizens living in one country.

Rawlsian political theory has, in a sense, prepared the ground for the fight against terrorism and states that violate human rights in the name of pseudoreligious and monocultural values. Yet the discourse of this civilizational war, the struggle between good and evil, was not accepted by the West, which offered its own interpretation of events: the language of universal supracultural values and human rights. However, the question arises of whether it is just a change of language, while the essence of the dispute remains the same; in other words, whether we are trying to impose liberal democracy on all countries under the guise of defending individual rights.

Here we reach one of the fundamental issues of philosophy: the relationship between language and reality, and consequently, the concept of truth. The dispute about the nature of the relationship between thought and reality or the concept of truth and its definition has not been ultimately resolved, as is the case with most of the important philosophical problems. Regardless of the answer to the question of whether thought is related to language and whether the essence of the problem can be separated from its linguistic clothing, it can be said that liberalism does not identify with the ultimate truth. Its followers do not present themselves as possessors of absolute truth in the field of politics and generally do not create utopias—the theory of collective happiness—because the task of this political philosophy is not to lead individuals to achieve it.

**LIBERALISM, UNIVERSALISM, AND TOLERANCE**

Liberal democracy does not seem to be so aggressive. Due to the concept of negative freedom that is rooted in liberalism, this doctrine does not aim to make mankind happy. Twentieth-century liberal thought, expressed in the works of Berlin and Popper, emphasizes the negative freedom that prevents the imposition of specific values, freedom, and happiness on individuals. This does not mean an indifference to evil and violations of human rights, which is especially discernible in the Rawlsian concept. One can talk here about the limited tolerance that liberalism developed after humanity’s experiences with the ideologies of fascism and communism in the first half of the twentieth century.
The experience of terrorism is also not new. Since the late nineteenth century, this phenomenon has existed in global politics, and in political theories it was most often analyzed in connection with the ideologies of anarchism. In literary terms, however, in the classic novel by Joseph Conrad, *The Secret Agent*, this phenomenon was interpreted as a method of the cynical manipulation of people by agents who are in the service of a foreign state. This way of describing terrorism is far from outdated and, in general, the phenomenon itself is still perceived as a dead end, a form of protest that is generally ineffective and waged by manipulators who exploit the naivety of rank-and-file fighters.

Even so, terrorism from the early twenty-first century is in essence a new phenomenon, as the American political scientist Joseph Nye points out writing that the current form of terrorism is “the privatization of war.”\(^{10}\) This means that, unlike a hundred years ago, terrorists do not have to have support in a particular country. Due to the shrinking of the world and the development of technology, terrorist groups can act in a private way and it is not enough to destroy one country to deal with this phenomenon. This conclusion can be drawn solely on the basis of the partial success of the United States in its war with Afghanistan and amounts to the fact that: “The paradox of American power in the twenty-first century is that the greatest power since Rome is unable to achieve its unilateral goals in an age of global information.”\(^{11}\) This is confirmed by the opinions of politicians and economists who point to the need for cooperation between nations as an indispensable condition for success in achieving their goals. This applies not only to the fight against terrorism or the only remaining global superpower that the United States has become. It seems that the United States cannot afford to isolate itself from the rest of the world and have an indifference to the fate of other peoples, and in addition, the only way to exercise power in the world is, in Nye’s opinion, in the form of soft power, that is, the dissemination of the cultural, economic models of the West and seeking opportunities for international cooperation to the broadest possible extent.

In addition, when analyzing the tragic events of September 11, attention was drawn to the fate of the masses of people deprived of basic comforts and rights. This coincides with the assessment of the globalization process, which in poor countries is seen as strengthening rich countries and leaving the poor to their own fate. Globalization is thus closely connected with defining the role of the world’s superpower. The theory of “soft power” is based on the belief that no country in the world can effectively achieve its goals unilaterally but must cooperate with others. Thus, one can see how the issue of cooperation, which is one of the fundamental problems under consideration in contemporary political philosophy, is slowly becoming a feature of thinking about politics and solving current policy issues.
Although the problem of cooperation in contemporary theories of liberalism is sometimes interpreted in different ways, it is interesting that it appears as an ethical problem. The introduction of ethical issues to political and economic considerations is a significant feature of the twentieth-century theories of Rawls and Nozick and is also present in some varieties of the theory of public choice. The discovery of collective choices—collective, public, and social—in the liberal thought of the second half of the twentieth century brought new perspectives to political theory. It was noticed that they have their own specificity and character that were different from individual or private choices. It was an attempt to overcome the problem of individualism with the theory of liberalism and to solve the question of how to move from individual choice to a collective choice and justify—on the basis of methodological individualism—the legitimacy of such collective decisions.

This problem has been tackled in various ways in philosophy, sociology, and economics, with a greater or lesser application of game and decision theory, and also in public choice theory, which only sporadically referred to mathematical models or decision theory, focusing mainly on analyzing phenomena from the political and social spheres, captured in an economic perspective, as part of the process of exchange and cooperation. The representatives of this school, Buchanan and Tullock, considered this paradigm to be the basic determinant of the economic description of the world and the economic way of thinking. There was a significant shift of emphasis here from free competition to a consciously created political order; for Smith, free competition was the basic mechanism of the economy, and along with the vision of the world order—the invisible hand of the market—it gave the researcher the interpretative tools needed to understand the surrounding economic reality. Yet contemporary public choice theorists reject the superhuman nature of the social world that comes from natural law and no longer believe in the self-generated harmony of the interests of competing individuals.

**GLOBALIZATION AND THE ECONOMIC WAY OF THINKING**

The paradigm of free exchange, taking place in a market that is beneficial for the parties involved, is considered by public choice theorists as an economic mechanism that allows us to also understand and explain other areas of collective life, above all the field of politics. This does not mean the rejection of free competition; on the contrary, it appears as a basic mechanism of economic and political phenomena and as a complement to processes of
exchange. A new feature of these liberal theories is the indication of cooperation, which, together with competition, conditions the beneficial economic exchange. Contrary to the liberalism of Smith or Milton Friedman, public choice theorists recognize the need for cooperation and, subsequently, the selection of state institutions in order to create a framework in which the competitive exchange of goods on the political market can take place.\textsuperscript{13}

There is an indication of cooperation that, together with the competition, conditions the beneficial exchange.

The main focus of public choice theory is the sphere of politics, while ethics is considered as an autonomous domain, albeit one that is closely related to politics. This theory assumes the following: the concept of a human being as a rationally acting individual, the individual character of human choices, the freedom of the individual that enables choice, and also the sphere of political and economic institutions functioning within a certain culture and ethical values.

The public choice theory is a concept that, on the one hand, refers to the dominant liberal political philosophy of Rawls and, on the other hand, is home to elements that are typical of the libertarian thought of Nozick. It is an intermediate position between the trends in Rawlsian theory, which draw on universalism, and those of classical liberalism, which contain the idea of individual freedom that manifests itself in the rational choices made within it. Its original feature, however, is the perception of the unique nature of collective action, its rationality, and universal dimension, which means that this theory applies to different societies and cultures.

For this reason, this theory seems particularly useful for assessing processes of social change. Its application to describe phenomena in liberal-democratic Western countries has been manifested in attempts to describe and understand internal policy, state administration, bureaucracy, and other interest groups. This theory has become an excellent tool for describing the political and economic transformation of the system, and in recent decades, its main assumptions have been proven in Central European countries, above all the belief in the need to create an institutional foundation for the operation of the free market, capitalist economy, and liberal-democratic politics. According to this theory, in order for the free market to develop, it is necessary to establish (legal and economic) institutions that have been consciously created and developed by people; without them, by itself, there would be no capitalist economy or democratic political system. It can also be said that there is a close relationship between the globalization process and the diffusion of the principles of liberalism and democracy in the modern world because in the opinion of most contemporary political philosophers, including public choice theorists, the most favorable environment for these processes is liberal democracy.
It is worth focusing our attention on the history of Poland at this point, where one can discern numerous examples of it having drawn inspiration from Western culture, especially since the Renaissance. These show that, as a rule, these contacts turned out to be beneficial for this country, until the communist authorities after World War II arrested this development by preventing the free flow of people, ideas, and information. As a result, in the early 1990s, when the political transformations began in Poland, the British historian Norman Davies posed a provocative question in one of his lectures, of whether Poland belongs to Europe. He said that, despite its European cultural heritage and traditions, many Westerners still treated the country as belonging to the East rather than the West. However, this perspective shifted at the beginning of the twenty-first century, since as a result of democratic changes and the introduction of economic liberalism, Poland together with other Central European countries joined the European Union, trying to make up for lost time and to meet the economic and political standards in Western Europe. In retrospect, it can be seen that this was a great historical achievement and, at the same time, a huge challenge.

The current political, economic, and cultural processes are closely related. Poland, which is a democratic state like other countries in our region, faces similar problems to those of mature Western democracies. Phenomena include corruption, illegal relationships between the business sphere and politicians, and pressure exerted on politicians by various interest groups. Despite the critical assessment of these phenomena in society, this does not mean that support for the principles of democracy has decreased. Public opinion polls, both in mature democracies of the West and in the younger democracies of Central Europe, indicate that democracy is perceived by citizens as the best form of government, accompanied by the manifestation of distrust of politicians and political institutions. However, this does not mean there is a crisis of democracy, but rather that steps need to be taken to modernize and reform it. We are confronted by the phenomenon of the “critical citizen,” who demands the strengthening of civic participation within constitutional liberal democracy. The meaning of participation has also changed, which now means taking part in public debates, expressing views in the media, and an emphasis on collective education and access to information. The consequence of these changes is a kind of political and cultural constructivism. Cultural affiliation is now largely a matter of decision resulting from public or collective choice, one that is made consciously by individuals. Thus, the cultural community appears to be created by people and thanks to their conscious efforts to build a bond between diversity, so as to preserve traditional values, creating a democratic cultural environment in the spirit of pluralism.

However, corruption, the undermining of ethical standards, and the tolerance of mafia structures are particularly dangerous for young democracies
and may prevent them from achieving economic prosperity. The very creation of legal principles, the framework in which political and economic life is to take place, will not produce results if the groups of producers in the business world do not accept these new structures and continue to think in terms of a bygone era of privileges, political influences and corruption. According to the American economist Michael Porter, the economic culture of a given society is important and helps it to achieve a competitive advantage on the international market, while it is not afraid of a conflict between a national culture and globalization; on the contrary, he believes that specific national or regional cultural features and values can contribute to the economic success of a given region in the world if they are utilized skillfully. One should not be afraid of economic globalization because this process strengthens competitiveness and forces individual nations to focus on the productivity of the economy, while unique national and regional cultural values play a positive role in economics and increase productivity if they operate in a competitive environment unrestricted by political constraints.

An analogous thesis may be ventured in relation to politics, namely that the existence of a democratic environment is as important to a democratic regime as the presence of an environment conducive to competition is for a free-market economy. Parliaments and governments can create appropriate institutions, but it is individuals, citizens and entrepreneurs who determine whether the young democracies of Central Europe will be effective and will manage to break free from the mentality of the previous system. In the longer term, the economic and political success of the countries operating within the European Union depends on whether they manage to change their national mentality and gain a competitive global advantage in certain industries. Their joining of the culture of productivity as described by Porter will also be beneficial for the international community.
Chapter 17

Cosmopolitanism and Global Justice

The discussion of the problem of cosmopolitanism and global justice began in the philosophy of liberalism in connection with attempts to transfer the Rawlsian theory of justice, formulated for a single state, to the whole of humanity. However, the philosopher, discussing the issue of “cosmopolitan or global justice” in The Law of Peoples, rejected this idea because it assumes a situation in which all people in the world would be in a scenario of justice as impartiality that would be guaranteed according to its two principles: personal freedoms (human rights) and at least the social minimum that is achievable at the moment in the world. Rawls does not believe in the introduction of the concept of a world government and the problems associated with it since he questions this concept as it has been developed in the works of Thomas Pogge and Charles Beitz. The key argument against global justice in this sense is contained in Chapter XI of The Law of Peoples, where the philosopher claims:

The foreign policy of a liberal people—which is our concern to elaborate—will be to act gradually to shape all not yet liberal societies in a liberal direction, until eventually (in the ideal case) all societies are liberal. But this foreign policy simply assumes that only a liberal democratic society can be acceptable. Without trying to work out a reasonable liberal Law of Peoples, we cannot know that non liberal societies cannot be acceptable. The possibility of a global original position does not show that, and we can’t merely assume it.

According to Rawls, only two principles of justice as fairness result from the original position, and it was for this purpose that this hypothetical situation was created. Moreover, the innovative use of social contract allowed the emergence of the basic and obvious principles that all agree on in an impartial manner. The issue of the state system is closely related to the idea of justice
as fairness because the implementation of this idea must lead to determining not only the shape of a well-ordered and just society but also the shape of the state that implements this idea. Rawls comes to consider the optimal system for this in *A Theory of Justice* as being constitutional liberal democracy, and its institutions and forms are the subject of further investigation as is the question of the universal character of this system. In his conception, however, the question of whether liberal democracy can be the basis of a global, universal political system would only emerge in the future from the supranational liberal law of peoples that should be developed.

He presents a political conception that is different from the most commonly accepted ethical definitions of cosmopolitanism. It envisages the individual in terms of world citizenship and the resulting equality of people in terms of needs and entitlements, writing that the path to a society of well-ordered peoples leads to establishing the right of peoples agreed between existing liberal and decent societies; it is not derived from the original position. Furthermore, a theoretical transition from this situation to a world state that is too hasty could lead to wars and unjust actions being undertaken in the name of global justice, the introduction of which would require the imposition of a liberal democracy on all peoples. The “realistic utopia” proposed by Rawls takes into account the real international situation and assumes the possibility of a peaceful transformation of systems in order to bring about world peace for good reasons, a transformation that is based on justice between nations, the principles of which are also determined in a given original position, not one of individuals but rather the already formed communities that participate in it.

The contract is agreed between liberal and decent people who, despite their differences in political systems and varying social structures, respect human rights while allowing economic differences stemming from their varying economic situations and tolerating variations in the position of the least advantaged members of a given community. However, a problem arises with states that violate human rights. How and in what circumstances could they join the world community of liberal peoples? Rawls leaves this issue for later resolution, for a time when international law defining the foreign policy principles of liberal peoples has been developed. Yet in this case, he does not talk about a homogeneous liberal society of the future but about peoples (“liberal decent societies, living as members of a society of well-ordered peoples”), each of whom recognize the principles of international law and apply them in their foreign policy.

Rawls is an opponent of the far-reaching integration of states, not merely because of the danger of using violence to attain the world state but, above all, the problems connected with the attainment of a minimum subsistence level in economies and cultures, which vary greatly. Realism in the perception of
the actual status quo prevents him from designing a purely utopian global *polis* and from considering the kind of consequences of “justice as fairness,” as was the case with Pogge and Beitz. Rawls keeps away from these ideas, and in general, he considers their approach to the problem of global justice to be totally erroneous. It is pointed out that Rawls differs from other cosmopolitans in his critical assessment of the role of governments that enforce state interests at the cost of individuals. Thus, in *The Law of Peoples* he argues for “the second original position, one that involves representatives of all ‘peoples,’” not nations or states.⁹

### KANTIAN COSMOPOLITANISM

In presenting his outline of a realistic utopia, Rawls shows himself to be a continuator of the political philosophy of Kant, who wrote in *Toward Perpetual Peace*:

Peoples, as states, can be judged as individual human beings who, when in the state of nature (that is, when they are independent from external laws), bring harm to each other already through their proximity to one another, and each of whom, for the sake of his own security, can and ought to demand of others that they enter with him into a constitution, similar to that of a civil one, under which each is guaranteed his rights. This would constitute a federation of peoples, which would not, however, necessarily be a state of peoples. herein would lie a contradiction, because every state involves the relation between a superior (who legislates) and a subject (who obeys, namely, the people), whereas many peoples within one state would make only one people, which contradicts the presupposition (since we are to consider the right of peoples in relation to one another here insofar as they make up so many different states and are not to be fused together into one state).⁷

Kant’s argument against seeing the idea of cosmopolitism as leading to the creation of a world state is based on showing the contradiction that would be created by transferring the law of nations, where the subjects are sovereign nation-states, to the transnational state in which a legal system based on different principles applies. In the remainder of this text, defending his concept of cosmopolitanism as the creation of a union of states on the principles of the law of nations, Kant adds:

The idea of international right presupposes the separation of several independent, neighboring states from one another. And although such a state of affairs in itself is already a state of war (if a federative union of these states does not prevent the outbreak of hostilities), even this state of war is, according to the idea of reason, better than the blending of these states into a power that
overgrows the existing ones and ultimately turns into a universal monarchy. This is so because laws increasingly lose their force as the borders of a government are extended, and a soulless despotism, after having eliminated the seeds of good, ultimately declines into anarchy.\textsuperscript{11}

In \textit{Idea for a Universal History from a Cosmopolitan Perspective} (1784), Kant assumed that one day, states would create a federation of republics connected by a common legal system and, in this way, establish peace in the world. Then, in \textit{Toward Perpetual Peace} (1795), he provided three conditions for such a federation: (1) striving for peace, (2) republican system that guarantees that the citizens are free, and (3) hospitality.\textsuperscript{12} He did not change his views on the federation of the states that are culturally different and have their own legal system, in accordance with the developed legal system that is valid in the federation.

Pauline Kleingeld observes that while in the 1780s “Kant defended the ideal of world-wide federation of states with the power to enforce its laws, in \textit{Toward Perpetual Peace} he inserts a voluntary non-coercive league between the international state of nature and the ideal international federation with coercive powers.”\textsuperscript{13} She concludes that, if law had to be enforced in a state, then consequently, Kant had to develop the idea of a world state. This interpretation of Kleingeld’s, however, is not confirmed in the works of Kant. He disapproved of the global state as a monarchy introduced by force and never postulated a global republican system in the form of one state.\textsuperscript{14}

Kant saw the danger of a far-reaching integration of nations that would cause the creation of despotic empires and their subsequent decay. He foresaw such consequences in the political situation of his time, where the powers were enlarging their territories by means of conquest (such as the partitions of Poland) or by establishing colonies. In fact, starting from the analysis of events of his day, he accurately predicted the political shape of Europe in the nineteenth century, as well as the fact that the dominant powers would eventually disintegrate. This Hobbesian view of the political situation did not lead him to political realism because at the same time, he proclaimed in his works a postulate of the pursuit of a utopian vision of the world. This perfect condition—“a universal cosmopolitan condition”—would follow revolutions and transformations and comprise a federation of nations coexisting under international law in a peaceful manner.\textsuperscript{15}

Kant had to some extent laid the groundwork for the idea of a realistic utopia as formulated by Rawls in \textit{The Law of Peoples}, for they would both agree that a peaceful union of peoples should be created on the basis of international law, and that this community could not be a world state but rather a federation of nations with similar political systems, and this is a certain ideal to which existing peoples should strive. Although Rawls perhaps adopted the
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idea of the second-level original position in which liberal peoples as the parties select principles of the Law of Peoples from Kant, differences appeared in the manner in which they sought to justify this international order; Rawls also saw economic difficulties in implementing the principles of global justice. The obstacles emphasized by both of them in the realization and maintenance of the global state stemmed in both cases from a realistic view of the contemporary political reality around them and led them to the conclusion that world peace would only be guaranteed in the future by a system of cooperation between societies with similar political systems.

COSMOPOILITANISM IN THE CONCEPTIONS OF NUSSBAUM AND SEN

Martha Nussbaum also referred to Kantian considerations, where in her essay *Kant and Cosmopolitanism*, she set herself the goal of not only a detailed analysis of the concept of cosmopolitanism derived from stoicism and popularized in the Enlightenment era but also establishing a new way of thinking about politics on the basis of this tradition that, at the same time, would direct efforts at its reform. In modern philosophy, she delineated two main traditions: the Kantian, which proclaims the ideal of politics based on respect for rational humanity, and the Nietzschean, which advocated a reference to patriotism and group sentiments in politics. In her opinion, Habermas and Rawls are the continuators of this first tradition, while the latter tendency is represented by Heidegger and American communitarians, primarily MacIntyre.

This division is perhaps something of a simplification and sets out two camps to which the entire wealth of twentieth-century political thought cannot be reduced, since many philosophers cannot be included in either, such as Hannah Arendt or Isaiah Berlin. This classification, however, is first and foremost of value because, according to Nussbaum, the political misfortunes of our era—genocide, ethnic wars, and a lack of respect for human dignity—are the result of the dominance of the post-Nietzschean school of thought in contemporary culture. Therefore, she wants to reverse these harmful tendencies and demands the restoration of value to a school of thought that appeals to reason and is free from national prejudices. According to her, the most important issue nowadays is a return to the path indicated by Greco-Roman thought and continued in the Enlightenment era: understanding the world in terms of rationality and respect for man, which is a way of both thinking and reforming that can be described as cosmopolitanism.

In political philosophy, Kantian cosmopolitanism is a position that proclaims the potential for the peaceful coexistence of nations connected by international law. However, as Nussbaum points out, it is also a moral,
regulative idea that leads individuals to participate in the realm of free and rational beings, a virtual cosmopolis that can be imagined as a utopian vision of the future, where everyone is guided by the categorical imperative.\textsuperscript{20} This concept of a cosmopolitan moral community was close to that of the Stoics, who accepted moral obligations applying to all human beings following Terence’s maxim: \textit{Homo sum, humani nihil a me alienum puto.}\textsuperscript{21} They also assumed that the transformation of human nature was possible, believing that emotions can be completely subordinate to reason, something that sets them apart from Kant, who voiced the conviction of the immutability of human nature.

Nussbaum, however, claims that the Stoics did not completely reject the relationship of the individual with a particular \textit{polis}, whether it was Athens or Sparta, which was typical of the Greek consciousness of the time. This concerned, above all, defining one’s identity in terms of a specific citizenship, for example, being an Athenian. The Cynic Diogenes, who questioned this kind of identity by claiming that he was a citizen of the world, initiated a cosmopolitan tradition that distanced itself from national identity. In Stoicism, however, being a citizen of the world meant that citizenship is defined by the recognition of the value of reason and moral principles, constituting a kind of rational affiliation. Cicero developed this concept later, presenting the metaphor of the circles in which man lives: from the narrowest, of family and friends, through the local community, the state, to the society of reason and goals, and our moral aspirations, which are the source of the moral and social obligations of the individual. The interpretation of Stoic cosmopolitism as an ethical idea was, in the opinion of the American scholar, the inspiration for the concept of the state of Kant, something that confirms the relationship between Ancient and Kantian ethics.

Setting aside the assessment of the legitimacy of this interpretation, which perhaps overemphasizes the ethical dimension of Kant’s cosmopolitanism, it is worth noting that the echoes of such cosmopolitan concepts return in the ongoing discussions. First of all, they serve as an argument against the theories proclaiming the radical difference of cultural values (communitarianism) and the resulting lack of consensus between individuals belonging to the civilization of the East or the West, which leads to the inevitable clash of civilizations (Huntington). This position is criticized by Sen, who emphasizes that these theories are burdened by thinking in terms of a single affiliation—assuming the permanent attribution of an individual to a specific nation, religion, or cultural circle. Like the Stoic model, this philosopher argues that, although it is difficult to imagine a man without any specific affiliation, reality shows the possibility of individuals having a variety of family, social and cultural affiliations that define them, that is, pluralistic affiliation. This is why the ideas of social justice or democracy can, in his opinion, also be adopted in
Asian countries, and the idea that “Westernization” is being advanced by the movements advocating it in these countries is based on a misunderstanding.²²

Nussbaum similarly defines cosmopolitanism in terms of moral-political categories. It is both an ideology based on a rational vision of the world and respect for every human being, as well as a growing attitude of activism and the pursuit of rationally defined goals through reforms rather than revolutions. For Nussbaum, however, the normative nature of this concept is important because she believes that any departure from the idea of cosmopolitanism leads to war and also causes racism, sexism, and all kinds of discrimination, and the post-Nietzschean trends dominating contemporary philosophy only deepen this chaos in modern consciousness. Nussbaum does not believe, like Kant, in the slow and automatic progression of humanity toward an increased rationality and morality, nor does she assume the potential for the gradual popularization of Rawlsian public reason. However, she thinks that these worrying trends in politics should be counteracted by educating young people through disseminating cosmopolitan attitudes and creating and promoting this tradition. She also believes that the Kantian-Stoic approach to cosmopolitanism allows the assessment of the policies pursued by individual states. And thus, in her opinion, if Kant and Cicero were to assess the modern United States, they would accuse its current government of not caring for the rest of the world, and for the dramatic situation of people in many countries in which there is war or poverty.

**KANT AND STOICISM**

The interpretation of cosmopolitanism presented by Nussbaum has a certain partiality, however. She bases it primarily on the concepts of Cicero and Kant, who treated the idea of cosmopolitanism as an ethical idea that has consequences for politics. Interpreting Stoic cosmopolitanism as an ethical ideal became the inspiration for the Kantian Realm of Ends as expressed in *Groundwork for the Metaphysics of Morals;²³* this seems valid enough, but she overstresses the ethical dimension of Kantian cosmopolitanism, overlooking elements that show how the idea was primarily a political one. After all, as I have already mentioned, Kant defined cosmopolitanism on the political plane as a concept of the community of nation-states joined together by international law. Perhaps in Kantian ethics, and especially his anthropology, we can discern the elements mentioned by Nussbaum: the universal nature of man and his reason and ability to conduct his private and collective life according to the principles of reason.

On the one hand, Kant assumes a cosmopolitanism of moral nature in his ethics, as he claims that we are all more or less equal in terms of rationality
and moral skills, although on the other, in some utterances Kant presents women as unequal to men in terms of their cognitive ability. However, he did not overestimate the political role of this individual reason when he wrote about the inevitability of war as a tool for improving people and societies, as well as the fact that human nature cannot be changed in terms of its purely biological conditioning. Believing in progress, Kant was a cautious optimist with regard to the possibility of the full realization of a cosmopolitan community in the future.

Kant was not an epigone of stoicism but a philosopher of the Age of Enlightenment, and apart from the idea of progress, he recognized the value of not only international law but also the changes necessary in the consciousness of people who realize this process of the gradual increase in rationality and morality. In fact, he was closer to our modern thinking than to ancient ideas. In his conception of what the Stoics considered possible for a man, namely abandoning our emotions and desires in favor of reason and the conscious internalization of rationality and universal morality, he believed that this complete internalization was not feasible because man is not and never will be a completely rational being. Moral progress is achieved not only through wars but also through institutions and political actions, primarily thanks to laws that civilize humanity and gradually transform it into a cosmopolitan community. The Enlightenment was an important stage in this process due to significant changes taking place not only in the collective consciousness but also on the political level.

One condition for achieving this goal, and perhaps the most important, is the growth in universal enlightenment, and therefore the increase in rationality in thinking and ethics in the actions of an increasing number of people. This is what progress, in Kant’s opinion, relies upon since it is not done automatically and in a fatalistic manner, but thanks to the conscious effort of rational beings, pushed and induced to this kind of action by nature, which uses deceitful means such as wars to compel people to undertake ethical activities on a mass scale. This was the inspiration for Hegel’s famous notion of the “Cunning of Reason” whereas for Kant, it is an educational program that nature offers to man. This is because if the individual is an absolute legislator in the ethical sphere, then individual projects do not really count in the field of politics. We are dealing here with the actions of rulers, and the task of their education lies with the philosophers.

KANT AND RAWLS

Kant, speaking of the order of nature as a regulatory idea, one that should determine the content of political actions taken by rulers, was in line with
the concepts and manner of thinking of the day since it was only in the second half of the twentieth century that the theory of collective choices was founded, based on research on democracy, which explained the possibility of making individual decisions regarding entire communities. According to this theory, individuals impose restrictions on themselves in accordance with the Kantian maxim that man is a creature who, of all beings, needs a master the most, while the master in modern versions of liberal democracy is the constitution and the system of law based on it. In this sense, Rawls turns out to be closer to Kant than to the Stoics; he believes that human nature cannot be changed, but conditions can be created in which people act for the common good, which is the international cosmopolitan legal order that enables states and nations to live in peace.

Rawls’ point of view is similar to Kant’s: currently it is not possible to equalize the living standards in terms of economy, but it is possible to equalize political rights as the basic condition of the cosmopolitan community that is a federation of national states without extensive unification. A similar view is presented by Nagel, who claims that there is social justice understood as a just distribution in the framework of a national state since it has an enforceable legal system and the requirements of justice can be applied within it, but it is harder to meet the conditions of such a distribution on a global scale. Certainly, we have moral obligations, but they are not enforceable demands.

In the Rawlsian view, economic reasons create an obstacle to extensive integration, thus preventing just distribution on a global scale. Both Kant and Rawls argue that such an integration is not needed for the peaceful cooperation of constitutional liberal democracies or republican countries. International legal regulations that guarantee that human rights are respected by those countries suffice in this regard.

Kant was an Enlightenment philosopher who recognized the world order of nature. At the beginning of this era, theorists of the modern school of natural law, Hugo Grotius and Locke, linked this order to God, who was its creator. The function of the concept of natural law was to provide an objective basis for moral judgments and legislation. In this era, however, its internalization took place in the work of Hume and, above all, Smith. Here, the idea of an impartial spectator appeared, according to which man became the decision maker in ethical issues, whereas Kant based his ethics on the notion of duty and selflessness that can be achieved in the process of reasonable decision-making when reason controls the will.

In the Rawlsian philosophy, things are somewhat different. The individuals are guided by various motivations and even when their choices are based on interest or utility, they can make morally decisive decisions. These motivations, however, are insufficient for the construction of a just state; there is
a need here for impartiality, which in his opinion can be achieved during collective choices by means of the application of a certain procedure. And although the processes of attaining unselfishness and impartiality in Kant and Rawls are not identical, both the Kantian categorical imperative and the Rawlsian procedure of the emergence of the principles of justice are rational procedures for moving from partiality to impartiality when making individual or collective decisions.  

**DOES RAWLS REJECT HIS ORIGINAL THEORY OF JUSTICE?**

In *A Theory of Justice*, Rawls developed a procedure in which he adopted certain preconceptions about human nature. The contract in the original position contained individuals who represented certain social groups, rather than actual individuals, and thus generalized their potential and living conditions as rational beings, driven by the desire to attain their own interests. Selflessness provides a veil of ignorance in this situation that permits the optimal and beneficial decision for all members of society to be made, and the assumption made here of the universal structure of the human psyche is the equivalent of Kantian practical reason.

Thus, why not transfer this reasoning that is appropriate for defining social justice from the state level to all humanity and not define the principles of universal or global justice? In addition to the aforementioned argument taken from Kant, it can be assumed that Rawls took into account the legitimacy of the critical arguments that were formulated by the communitarians against his theory of justice, who placed the individual in a cultural environment and believed that their way of understanding the world (epistemological horizon) always had a specific historical-cultural background. This could be the reason why Rawls in his works, recognizing to some extent the correctness of this argument, assumed that the path to achieving world peace lies through building a community of people and consists of a gradual evolutionary process of joining together liberal-democratic states. In a letter to Philippe Van Parijs, Rawls outlines precisely this kind of process, referring to the emergence of the European Union, and indicating that any such association of liberal societies should adopt a definition of justice through reconciliation, discussion, and final acceptance by voting in individual states to be in force in this community of rules. To impose one concept of justice “from above” would be contrary to the principles of democracy and would lead to a totalitarian political system.

It can also be assumed that Rawls, looking at the work of his younger colleagues developing his ideas and creating a cosmopolitan vision of
global justice, recognized the validity of the objection once made to his conception by Nozick, namely that this theory leads to a totalitarian state that drastically limits the freedom of individuals in the name of its doctrinal assumptions. rawls probably also saw the seeds of totalitarian thinking in theories of global justice and proposed an approach that took the requirements of reality into greater account. here again he turned out to be close to kant, who believed that political philosophy operates according to judgments that must balance the relationship between empirical reality and theoretical judgment. this consideration of empirical requirements and the mutual harmonization of theoretical thought and political realities probably became the reason for the rawls correcting of his original version of the theory of justice.

this correction was an attempt to answer the question that he specifically posed himself, namely the question of how to achieve the impartiality that is necessary to form cosmopolitan international law, and how to induce peoples to create such a law and voluntarily become subordinate to it. at this point, rawls moves to an empirical level: the basis should be comprised of states that have similar systems of constitutional liberal democracy since these states do not want war—they want peace and collaboration for mutual benefit. some decent peoples, those that are not liberal but respect human rights, can also be accepted in the international community.

faith in creating a community of national states without unifying them looks like an unrealistic utopia, but realism suggests that this vision can be implemented if it is done in a peaceful manner and in a gradual manner by creating smaller international communities. according to rawls, this process should be based on a political theory that has to be related to a particular society with its particular tradition and cannot be a result of pregiven answers. this is the proper meaning of the rawlsian “realistic utopia” and his idea of political cosmopolitanism: striving for a community of states that have a peaceful attitude to each other and cooperate economically on a global scale. undoubtedly, this concept is similar to the idea of a federation presented by kant.

both of these ideas are characterized by the fact that they perceive political cosmopolitanism as a regulative idea, or an attitude that leads to the implementation of world peace and the cooperation of democratic and liberal states, republics, or states with similar systems. at the same time, they do not prejudge the final result of this process that is in progress and constantly needs conscious citizens (or enlightened citizens, as kant would say). in the days of kant and those of rawls, wars still existed, aggressive totalitarianisms were a threat, and social inequalities lead to rebellions. despite these tendencies, both philosophers cautiously believed in the potential progress of mankind toward peaceful international cooperation.
Rawlsian cosmopolitanism has a special character, which means that despite the similarities that exist, he cannot be considered either a modern advocate of Stoicism or a faithful continuator of Kantian philosophy. Rawls is far from proclaiming the Enlightenment optimism and faith in progress, he writes his works after the experiences of the twentieth century: two world wars, the crimes of the Holocaust, and totalitarian regimes that prevailed in Europe for decades. He does not recognize the supra-individual laws of nature that the Enlightenment proclaimed or the power of history that appeared in various forms in nineteenth-century thought but transfers the decision-making center to man and accepts the possibility, which is for now utopian, of achieving world peace by democratic countries governed by reason, leaving this vision to the discretion of the societies themselves.

Political philosophy in the Rawlsian sense is not, as in Kant’s famous term, a servant who carries a torch before his mistress because the late-twentieth-century philosopher is no longer the educator of the ruler and a benevolent and enlightened despot but rather an educator of the masses and democratic societies in which citizens decide about their living conditions. Although Rawls does not develop this educational role further, as Nussbaum does, they both have a similar understanding of the philosopher’s role within a democratic society.

Perhaps one can assume that the Rawlsian belief in public reason finds its confirmation to a certain extent in the Western cultural sphere. However, given that we have little influence on what happens outside the enclave of democratic countries, it is uncertain how this public reason would spread in economically undeveloped countries and other cultural traditions if we reject the path afforded by wars and violence. In fact, raising the standard of living and affluence, although it promotes peace, does not guarantee it at all, and the popularization of democracy requires an increase in rationality, something that is not an automatic process.

Thus, on the one hand, the belief that a fair society is possible and its embodiment is the constitutional liberal democracy expressed by Rawls in A Theory of Justice. When we reach the supranational and transnational level, this gives way to the cautious optimism that perhaps humanity will develop a political model that guarantees peace and freedom and creates the economic foundations for all people in the world; however, this will not happen by developing a good theory but only thanks to the efforts of individuals building smaller political structures and by gradually joining other countries to them. An example is the European Union, and its functioning and survival may confirm this forecast. This union was founded in the cultural environs of Western civilization, but it is not proven whether
outside of it the ideas of individual freedom and equality as well as human rights are recognized and valued.

On the other hand, as Sen argues, the conviction of the unique character of Western civilization is also not justified on empirical grounds because the values that we associate with it can also be discerned in other cultural circles.\textsuperscript{38} However, Sen does not come to the conclusion that it is possible to form a democratic global state and, like Rawls, considers this idea to be a kind of utopia that has no chance for practical realization. This does not prevent him from calling for thinking in terms of supranational solidarity and cooperation in which one can rely on already existing international institutions and supranational nongovernmental organizations without the need to establish a gigantic world state. Thus, ultimately, both the views of Rawls and Sen on the issue of cosmopolitanism as a path leading to the achievement of world peace amount to political pragmatism.

In Sen’s and Nussbaum’s political philosophies, the notion of human capabilities provides an empirical background for their theories of social justice. It links the issue of human rights with government policy in such a way that it fosters the justification of citizen’s claims toward the state. In these theories, individuals and the state are not opposing forces but rather elements of one model of social justice. Moreover, the capabilities approach allows new social policy to be enacted by governments with regard to the issue of inequalities. In light of their theories, the problem of inequalities is no longer seen as the antagonism between the poor and the rich, and they do not offer any simple solutions to this problem, such as a recommendation for the government to reduce the gap between the richest and the poorest members of any society. They instead suggest a social policy that should create an environment for the development of individual capabilities to the fullest extent that is possible within the economic situation of the country. Considering economic inequalities on the global scale (between nations), a policy based on capabilities can be universally applied and is thus a better strategy to combat them than Rawls’ theory, which leaves economic matters solely to the concern of the government in question and is affected by the decisions it makes.
Chapter 18

Whose Justice? Whither Liberalism?

The history of liberalism, as well as its impact on contemporary political thought and current politics, testifies to the strength of the value that is political freedom, which postulates the independence of the individual from collective entities, above all from the state. Liberal freedom in the sphere of thinking and political action is of a constructive nature, contributing to political changes, not through violence but through peaceful methods. John Rawls also introduced another important idea to liberalism, namely equality, because the theory of social justice he created combined two values previously perceived as oppositional into a harmonious whole and required them to be simultaneously realized in a liberal democratic state. And although not all liberals accepted this theory, from then on, the Rawlsian idea of justice combining freedom with equality permanently entered the philosophy of liberalism and became the basis for ongoing discussions, developments and polemics. This meant that contemporary liberalism could no longer ignore social issues; it should explain and justify the extent of social inequality and face the problem of poverty.

The latest works of representatives of this trend concern the issue of justice, while the works of Amartya Sen and Martha Nussbaum are not only a reference to the path indicated by Rawls but also present a new, original approach to justice, which, in their opinion, better solves current social problems. These authors formulate concepts of justice as a procedure that leads to the creation of the model of a democratic society they recommend, one that allows them to draw normative conclusions and assess the existing reality. These theories, despite their pragmatic nature, do not directly relate to current affairs, for example, to the economic crisis—on this subject, the authors limit themselves to journalistic statements, such as Sen, who, during the recent crisis, criticized the role of rating agencies exerting pressure on the market.
In fact, this crisis was largely solved by practitioners, both businessmen and politicians, who made ad hoc decisions to counteract the threat of the collapse of financial markets, but these were short-term actions rather than a strategy based on analyzing the causes and drawing conclusions from them.

Is contemporary liberalism then entering a terminal phase and no longer provides the inspiration to create political, social, and economic reality in the future, and will this inspiration come from the revival of left-wing conceptions? Undoubtedly, the ideas of freedom and equality have always been present in various left-wing ideologies and today, they are the motivation for radical social and political movements. Generally, however, moderate liberal trends that harmonize these ideas are gaining ground in world politics, and the latest theories of global justice show the direction in which politicians should go in the fight against extreme inequality and poverty throughout the world.

Each of these theories focuses on a slightly different sphere of human life. Nussbaum draws attention to the problem of the exclusion of certain social groups (and animals) from considerations about justice and provides a list of capabilities that should be implemented in the world and constitute a measure of the standard of living of individuals. Sen, in turn, demonstrates the relationship between the political and economic sphere of the state’s activities and shows the role of social debate and other democratic institutions that force politicians to make changes to improve human life and create greater possibilities for human action. Claiming that the power of transforming the world and ensuring abundance lies with the individual and his freedom, Sen, like Michael Porter, does not believe in theories of overpopulation. He believes that expanding wealth in the world can be an unlimited process; the condition is to free up the initiative of individuals, to allow people to take action so that they can realize their abilities. However, as long as there remains deprivation and hunger in the world, Sen states that in order to counteract them, apart from the individual freedom of action and help from the state, it is also necessary to refer to values that in difficult conditions foster the release of human energy and help them to escape from poverty. In an original way, referring to Adam Smith, he emphasizes the role of moral feelings, such as sympathy and solidarity in the economy, which complement the liberal cult of freedom. Thanks to these values, we do not have to overfight inequalities and postulate equality, which is unattainable in reality, because these values foster the growth of individual well-being and allow us to transform collective life. To some extent, it is a utopia but one that is well embedded in the realities of the modern world.

Sen does not specify the ideal model of the state in detail but rather indicates the direction in which the world should go and the goals that liberals should fight for today to make the world more just. In this world, freedom must be enriched with solidarity and cooperation, key ideas that can develop
in a democratic state, and the condition for their implementation is, in his opinion, the dissemination of education and public debate in a democratic state.

Liberalism therefore remains an attractive and valuable idea, and the ongoing dispute between supporters of Rawls and Sen concerns specific systemic solutions within a liberal-democratic state. The former, like Thomas Pogge, are in favor of a state that guarantees a minimum level of subsistence and prevents the widening of economic and social inequalities. The latter, like Nussbaum, attach importance to equating the benefits of all citizens living in the state, demanding not equal income but enabling citizens to participate equally in public debate over which important social issues are to be resolved. They do this so that certain groups, hitherto excluded from the debate, such as the disabled, children, and also women in some countries, can make claims in the name of justice regarding the realization of their abilities and development opportunities. The freedom in question is inseparably connected with the balance of rights to claims in the name of justice.

The recent economic crisis made everyone realize, as was the case in the 1930s, that faith in a free and self-regulating market is untenable. Just as in the 1930s, governments had to intervene in the face of a deepening crisis. Their various corrective actions in turn caused another concern, namely whether this increase in their role did not constitute a return to the kind of all-powerful state that Ludwig von Mises and Friedrich Hayek had warned against. This danger, in the form of various overly engaged state agencies and the growth of bureaucracy, is completely well founded and poses a threat to both the freedom of individuals and effective management. Although the fear of the return of state socialism, after the collapse of this system in Central and Eastern Europe, has decreased somewhat, the kind of liberalism that dominates the political theories and practice of the European Union raises some concerns, precisely because of the growth of the state machine. The danger of the growing power of the Leviathan state was noticed by the public choice theorists who tried to stop it, postulating constitutional limitations to governmental power. Yet today, this does not seem to be a sufficient safeguard, especially in Europe, where local authorities are largely subordinate to the central institutions and legislation in force in the European Union.

The problem of finding an alternative to the excessive growth of the state that threatens human freedom is considered in the context of modern liberalism in connection with various approaches to the idea of justice and is associated with different models of the democratic state. Within these currents, Sen’s concept seems to be the most favorable with regard to freedom. He is in favor of a democratic state that allows all citizens to speak on matters important to the community and in which state or nongovernmental institutions will translate the results of public debate into practical actions. Freedom
and economic prosperity in this concept always refer to the individual and therefore tries to reconcile the ideal of freedom with the economic requirements of the nation-state or international institutions expanding their powers; Sen states that they must be controlled by citizens, and the mechanism behind this control is democratic debate.

A threat that is currently confronting liberalism is not the expansion of socialist ideas but rather those of utilitarianism and the cult of prosperity. This is no longer the antinomy of freedom and equality that became a dispute between liberals and libertarians but a process of the development of liberal democracies toward the utilitarian totalitarianism described by Aldous Huxley in *Brave New World*. The political philosophy of Sen, who perceives the value of individual freedom as a factor that makes progress and postulates public debate as a kind of protection against the domination of utilitarianism, is an important voice in the defense of individual freedom. Similar views are expressed by public choice theorists, who not only take into account social mechanisms but, above all, postulate democratic political institutions that may serve to protect this freedom.

Thus, the polemic between liberal theoreticians of social justice also concerns certain visions of the state. Both the concepts of Rawls and Sen are based on individual freedom, but the former, in the name of protecting the poorest, allows the strengthening of state structures, which must negatively affect the freedom of citizens. Sen, however, does not focus on the issue of the state ensuring material well-being but emphasizes the individual freedom of action and nongovernmental institutions. The theory of justice created and developed by Nussbaum in her works is an attempt to indicate a somewhat different route than that suggested by Rawls—a way of thinking about a just state that includes a warning to authorities that completely excludes their citizens from matters that concern their lives. The discussions about justice that are taking place in philosophy are not purely a matter of academic dispute; they also concern issues that are important for the progress and future of modern societies, ones that help to make us aware of the threats they face and understand the goals that should be pursued and attained.
Notes

FOREWORD: LIBERALISM, POLITICS, AND MORALITY


CHAPTER 1

1. “Justice is the first virtue of social institutions, as truth is of systems of thought”; Rawls, A Theory of Justice, p. 3.
7. Paul Weithman argues that the changes between *Theory of Justice* and *Political Liberalism* result from Rawls’ attempt to solve the difficulties he found in his original account of stability. He rejects his former view that the well-ordered by *justice as fairness* society would be stable and he admits that the citizens of this society may endorse any of liberal conceptions of justice. In *Political Liberalism*, Rawls changes his previous position to a more realistic view and describes a stable society not as a society in which everyone accepts a single conception of justice but as one in which everyone accepts one or another conception from a class of liberal conceptions. The Weithman explanation, however, does not exclude the fact that one of the reasons for this change was the communitarian critique; ibid., p. 164; P. Weithman, *Why Political Liberalism?: On John Rawls’s Political Turn*, Oxford University Press, 2011, pp. 272–73.
10. In Central and Eastern Europe, the reception of Rawls was somewhat delayed, given that this work became available after the transitional events of 1989.
12. S. Freeman discusses thoroughly the differences between the positions of Rawls and Sen in his book *Liberalism and Distributive Justice*, pp. 265, 276.

CHAPTER 2

14. Ibid., p. 32.
23. Ibid., p. 261.

CHAPTER 3

1. Researchers of utopias are keen to emphasize this difference: Judith Shklar marks a clear temporal divide between the formulation of true utopia visions up until the end of the eighteenth century and the post-Enlightenment visions of a progressive future; J. Shklar, *After Utopia: The Decline of Political Faith*, Princeton, 1957.


8. The equivalent of today’s concept of social justice in Aristotle’s terminology was justice of a particular type that deals with the unequal distribution of goods; see Aristotle, *Nicomachean Ethics*, Book V, 2, 1131a, transl. W. D. Ross, Kitchener, 1999, p. 84.


21. Ibid., p. 324.


**CHAPTER 4**


4. Ibid., p. 72.


7. In his *The Law of Peoples*, Rawls shifts the foundation of justice to the sphere of international relations, treating individual peoples as parties in the original position, the starting point for a new social contract; J. Rawls, *Law of Peoples*, p. 32; Freeman, *Rawls*, pp. 419, 432. This issue will be examined in more detail in chapter 17.


10. The advantage of Rawls’ theory of justice over utilitarianism is supported by arguments taken from game theory; see Z. Zaluski, Game Theory in Jurisprudence, Copernicus Center Press, 2013, p. 212.


23. Ibid., p. 302.


CHAPTER 5

1. The critique of the traditional understanding of philanthropy, which consists in the founding of charitable foundations by American millionaires, was voiced by Anand Giridharadas, arguing that it constitutes an undemocratic action, and maintaining that the classic tenet of liberalism of favoring the private sphere over the public does not solve the problem of poverty; Giridharadas, Winners Take All, p. 199.


4. This type of activity is currently gaining worldwide recognition. In 2019, the Nobel Prize in Economics was awarded to three scientists: Adhijit Banerjee, Esther Duflo, and Michael Kremer for their experimental approach for alleviating global poverty.

18. Ibid. 
19. Ibid., p. 76.
23. Ibid., p. 91.
24. Ibid., p. 56.
31. Ibid., p. 9.
Notes

33. Sen, Development as Freedom, p. 53.

CHAPTER 6

3. Ibid., p. 366.
4. Alexander, Capabilities and Social Justice, p. 54.
5. Sen, Poverty and Famines.
12. “Why did Sen use the language of capability and functioning to express claims which that language fits quite imperfectly? Because, I hypothesize, he had something in addition to midfare in mind, to wit, freedom, and he wrongly thought that attending to a person’s midfare—to what he gets from goods apart from the utility upshot of getting it—is attending to how much freedom he has in the world. Both the misrepresentation of all desirable states as a result of the exercise of capability and the tendency to represent all desirable states as activities reflect an interest in freedom distinct from, but not clearly distinguished by Sen from, the move from both utility and goods to midfare. There is a case for installing the notion of freedom within egalitarian discourse”; G. A. Cohen, “Equality of What? On Welfare, Goods, and Capabilities,” in: The Quality of Life, p. 19. See also: G. A. Cohen, “Amartya Sen’s Unequal World,” New Left Review (1/203-Jan/Feb 1994), pp. 17–29; reprinted in: G. A. Cohen, On the Currency of Egalitarian Justice, and Other Essays in Political Philosophy, edited by Michael Otsuka, Princeton University Press, 2011.
26. Ibid., pp. 76–78.

CHAPTER 7

3. Ibid., pp. 23, 133.
6. Ibid., p. 166.
8. Rawls, in replying to Sen’s accusations, shows that his theory also takes human capabilities into account to a certain extent. Essentially, however, the capabilities approach and the theory of justice as fairness are different ways of tackling the problem of justice, leading to their different consequences and application in the theory of law; see: B. van Roermund, *Legal Thought and Philosophy: What Legal Scholarship Is About*, Edward Elgar, 2013, pp. 173–74.
11. Ibid., p. 308.
12. Sen, *The Idea of Justice*, pp. 211–12. Sen notes that there are U.S. government hearings proving that Oppenheimer quoted Krishna to support his final decision and
this becomes a theme of the Heinar Kiphardt play “In the Matter of Robert Oppenheimer.” The moral dilemma faced by the American scientist is also portrayed in John Adams’s opera “Doctor Atomic.” Another example of the inspiration that Bhagavad Gita provides in contemporary American opera is “Satyagraha” by Philip Glass where in the first scene, entitled “The Kuru field of Justice,” this Sanskrit song debate between Arjuna and Krishna is presented. The libretto comprises words from the Bhagavad Gita, which was a guide for Gandhi’s activism, and is about early period in Gandhi’s life in South Africa where, under the influence of Krishna’s words from Gita, he would make the decision to fight the injustice affecting his compatriots in that country. Indeed, Gandhi’s philosophy of nonviolent resistance appears to be the proper third way between life-centered and duty-centered orientations.

13. Ibid., p. 219.

14. Sen emphasizes that the idea of the important role of public discussion in the formation of preferences was drawn from J. Buchanan; Sen, Rationality and Freedom, p. 290.


22. Sen postulates the inclusion of human capabilities and the possibility of their implementation primarily in the sphere of education and health protection as a measure of economic prosperity but opposes the creation of detailed lists, such as in Nussbaum’s conception. Elizabeth Anderson takes an intermediary position, proposing the identification of several key areas for human capabilities to feature: A. Sen, Beyond
Notes


24. Ibid., p. 24. Sen analyzes the criteria and principles of empirical research as well as their application in terms of human capabilities in detail in the work Commodities and Capabilities (1987).


CHAPTER 8


5. Considerations regarding the uniqueness of human nature in relation to the animal world can also be found in the philosophy of Nozick philosophy. Like Nussbaum, he contests the limited use of both Kantianism and utilitarianism in solving this problem: Nozick, Anarchy, State, and Utopia, p. 40.

6. In contrast to Aristotle, Nussbaum adopts a conception of man, which enables her to connect the animal world to the field of reflections on justice; Alexander, Capabilities and Social Justice, p. 61.


20. “If the Westerners could get rid of the notion of universal moral obligations created by membership in the species, and substitute the idea of building a community of trust between ourselves and others, we might be in a better position to persuade non-Westerners of the advantage of joining in that community.” R. Rorty, *Justice as Larger Loyalty*, p. 147; see also D. Rondel, “Appraising Justice as Larger Loyalty,” *Contemporary Pragmatism* 12, no. 2 (2015), https://doi.org/10.1163/18758185-01202007.


22. Ibid., p. 156.

23. Both Nussbaum and Rorty emphasize that the differences between people and animals only lie in the exclusively human negative emotions, such as pleasure from inflicting pain or suffering caused by cultural norms; R. Rorty, *Contingency, Irony and Solidarity*, Cambridge University Press, 1989; M. C. Nussbaum, *Political Emotions*, p. 158.


Notes

26. Ibid., p. 142.
27. Ibid., p. 147.
28. Ibid., p. 209.
29. Ibid., p. 314.
41. In many EU countries, including Poland, there are schemes aimed at reducing digital exclusion in rural areas, and a similar program has also been launched by the Bangladeshi Grameen Bank.

CHAPTER 9

1. Nussbaum, *Frontiers of Justice*, p. 16; Anthony Jasay considers this in a similar manner, arguing that the essence of liberalism is the question of choice and distinguishes between two aspects, which later in the theories of public choice will be defined as a choice between rules and the choice of the rules themselves. The first manifests itself during the formation of the contract: “Freedom of contract, no less that the freedom of all other choices, is limited by both the availability and the admissibility of options” (p. 97). The second option is characteristic of collective choices: “Collective choice is characterized by two parameters. One describes who is entitled to choose, who is the ‘decisive subset’ (or ‘winning coalition’) in the set the choice is made for. The other defines what options may (or may not) be chosen collectively. It is the border between the private and the public domain”; A. de Jasay, *Choice,
Notes


11. Ibid., p. 166.

12. In response to Nozick, Sen claimed that his charges were based on a misunderstanding and a difference in the definition of constraints in both cases. In Sen’s concept, constraints are associated with collective choice, and their assessment allows comparisons between societies due to the range of possibilities for individual choice available to them. In his theory, a society in which an individual can choose a place of residence from among the many possibilities available to them is better than one that restricts this choice to, for example, only one of the districts of New York; Sen, Choice, Welfare, pp. 306–7; Sen, Idea of Justice, p. 314.


19. Nozick, Anarchy, p. IX.


29. Sen, *Dialogue*.


31. Ibid., p. 208.

## CHAPTER 10


4. Ibid., p. 79.


Notes

17. Ibid., p. 43.

CHAPTER 11

7. Ibid., p. 271.
9. In both these theories, we find the allegory of Ulysses taken form the Homeric story of how Ulysses heard the Sirens singing and survived. He told his sailors to plug their ears with beeswax and tie him to the mast, and they all sailed safely. For Spinoza as well as for public choice scholars this is a symbol of a constitution, a set of binding rules that constrain our future choices and are beneficial for all. Ulysses represents society as a whole, and the mast and rope are the rules by which society is governed. This


15. Taylor, A Secular Age, p. 690; However, Taylor’s interpretation simplifies position of Rawls who defines a well-ordered society as governed by the public concept of justice: Rawls, Theory of Justice, pp. 4–5.

16. Buchanan, Limits of Liberty, p. 129.


CHAPTER 12


2. Nozick, Anarchy, State, p. IX.


Notes

13. Ibid., p. 115.

CHAPTER 13

2. Ibid., p. 81.
11. Ibid.
12. Ibid., pp. 211–12.
Notes

18. Ibid., p. 176.

CHAPTER 14


5. On the interpretation of the principle of unanimity, see van Erp, *Political Rea-


8. See www.europeanvaluesstudy.nl.


CHAPTER 15


3. The introduction of liberalism during the Enlightenment and its characteristic values inextricably linked it to the “myth of the Enlightenment,” which proclaimed the preeminence of reason in all spheres of human activity; T. Adorno and M. Horkheimer, Dialectic of Enlightenment (1944), trans. J. Cumming, Verso, 1997; this myth is now fading and liberalism regards itself as a branch of political thought that is typified by Western culture and values such as individualism or freedom of speech and regards democracy as the best model of political life. The basis of this system of values is the notion of the individual as an essence guided by reason in tackling the problems of collective life. However, of late there have been a number of departures from this position to adopt a form of politics of irrationality. As J. Smith puts it, “We are living through a moment of extreme irrationality, of fervency and ebullience, of destabilization and fear”; J. E. H. Smith, Irrationality: A History of the Dark Side of Reason, Princeton University Press, 2019, pp. 17, 175.

4. The counterpart to MacIntyre’s position is that of Sen, the notion of “plural affiliations,” the multiple membership of individuals to different cultures and collectives. In his opinion, the notion of individual cultural affiliations favoured by communitarians leads to conflict and violence; A. Sen, Identity and Violence, W.W. Norton, 2006, p. 25; see also: A. Sen, “Violence and Civil Society,” in: A. Sen (ed.), Peace and Democratic Society, Open Book Publishers, 2011, p. 3; Nussbaum, New Religious Intolerance, p. 146.


8. Ibid., p. 363.


**CHAPTER 16**


8. Discussions on this topic intensified at the beginning of the twenty-first century in connection with the enlargement of the European Union to encompass the
countries of Eastern Europe. At that time, the inevitability of this process of cultural unification was discussed, the rhetoric of highly developed countries referring to Enlightenment theories (Condorcet, Kant), which believe that they themselves have already achieved a perfect political state, and those less advanced on the way of progress will adapt to this innovation. The famous article by Habermas and Derrida about a “two-speed” Europe appeared in major European newspapers. This wording caused an outrageous reaction not only in the countries included in this second order but also in all those that do not accept the linear concept of progress and prefer to instead adopt Herder’s vision of a diverse process of the development of nations and cultures. So while the problems of culture and nation appeared in the discussions of the late twentieth century, it was only following the influence of terrorist attacks in New York and Paris that the question of the political significance of cultural differences arose—these were of specific religious and moral values that sometimes seem difficult to reconcile; J. Derrida and J. Habermas, “Unsere Erneuerung. Nach dem Krieg: Die Wiedergeburt Europas [After the War: The Renaissance of Europe],” Frankfurter Allgemeine Zeitung, May 31, 2003; J. Habermas and J. Derrida, “February 2015, or What Binds Europeans Together: A Plea for Common Foreign Policy, Beginning in the Core of Europe,” transl. M. Pensley, Constellations 10, no. 3 (2003), https://doi.org/10.1111/1467-8675.00333.

11. Ibid.
13. Buchanan, Limits of Liberty, p. 149.

CHAPTER 17

5. Rawls, Theory of Justice, p. 171.


8. Ibid., p. 120.


11. Ibid., p. 91.

12. Ibid., pp. 73–82.


20. Although every cosmopolitan proclaims community among all human beings, for some it is moral community that requires helping human beings; for others, it is understand in terms of global political institutions. This division is not very clear and both of these forms often appear together; P. Kleingeld, *Kant and Cosmopolitanism: The Philosophical Idea of World Citizenship*, Cambridge University Press, 2013, p. 4.


24. Kleingeld, *Kant and Cosmopolitanism*, p. 183; At the same time, a more courageous view was presented by Condorcet, who claimed that we are all the same when it comes to reason and feelings—both women and men; E. Rothschild, *Economic Sentiments: Adam Smith, Condorcet and the Enlightenment*, Harvard University Press, 2001, p. 210.

28. Ibid., pp. 93–94.
35. Rawls, in a letter from 1998 that he wrote to Philippe Van Parijs emphasized the difference in interpretations of *The Law of Peoples*. He gave as an example the process of the creation of the European Union: “Thus, suppose that two or more of the liberal democratic societies of Europe, say Belgium and the Netherlands, or these two together with France and Germany, decide they want to join and form a single society, or a single federal union. Assuming they are all liberal societies (or liberal enough to apply Law of Peoples to them), any such union must be agreed to by an election, in which in each society the decision whether to unite is thoroughly discussed. Moreover, since these societies are liberal, by the Law of Peoples they adopt a liberal political conception of justice.” Later on in the letter, Rawls justifies this model, which will lead to the creation of a federation of nations typified by diverse religious and cultural backgrounds: “Thus, political liberalism as incorporated into the Law of Peoples leaves to the voters and their further philosophical arguments to select which liberal conception is to be adopted by their union. . . . it doesn’t mandate any particular liberal conception, because it is not itself a complete philosophical doctrine; it must serve for a reasonable Society of Peoples as its international norms of conduct in which considerable differences of religious and philosophical opinion always will remain.” At the end of the letter, Rawls refers directly to the current situation and warns Europeans against too far-reaching integration, similar to the United States, which could threaten the breakup of this union of countries due to the great political, historical, and cultural diversity of Europe, which is of great value to the citizens of its individual nation-states; J. Rawls and Ph. Van Parijs, “Three Letters on ‘The Law of Peoples’ and the European Union,” in: D. Dankowski and A. Krzynówek-Arndt (eds.), *After Rawls*, pp. 288–90.


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