

JUSTICE FOR DISABLED PERSONS

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Symbol of justice is a blindfolded lady. Blind to all diversity, it provides impartial law and equal treatment for all citizens. Their rationality, cooperativeness, autonomy and independence confirm their legal equality. However, what about the people who, for various reasons, do not meet those conditions? Can a political community apply the principles of (political) justice to them? Does it relate to them unfairly excluding them from political relationships or building relationships with them on sympathy and compassion? Can compassion and empathy replace justice and the right to obtain justice? This paper, therefore examines the relationship between concept of political justice and disabled persons.

Key words: care, disabled persons, justice.

Pravednost za ljude s posebnim potrebama. Simbol pravednosti je žena s povezom preko očiju. Slijepa na sve različitosti, osigurava nepristran zakon i jednak tretman za sve građane. Njihova racionalnost, kooperativnost, autonomija i neovisnost potvrđuje njihovu zakonsku jednakost. Međutim, što je s ljudima koji zbog različitosti ne zadovoljavaju gore navedene kriterije? Može li politička zajednica i na njih primjenjivati načela (političke) pravednosti? Odnosi li se ona prema njima nepravedno ako ih isključuje iz političkih odnosa ili gradi s njima odnose utemeljene na sućuti i samilosti? Može li sućut i empatija zamijeniti pravednost i pravo na pravednost? Ovaj tekst stoga ispituje odnos između političke koncepcije pravednosti i ljudi s posebnim potrebama.

Ključne riječi: briga, ljudi s posebnim potrebama, pravednost.

INTRODUCTION

Justice, like other virtues, is an elusive ideal, but it is also a particular one because it implies ethical and political elements. As such, it requires personal responsibility for others. Because of that it is an assumption of stability in a (political) community. For Aristotle, law and equality define what justice is, and for modern philosophers like John Rawls justice is the first virtue of social institutions. When we talk about justice in this context, we talk about political justice.

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impartial law and equal treatment for all citizens. According to Aristotle, citizens are equal because they have equal right to participate in judicial and political decisions. Their rationality, cooperativeness, autonomy and independence confirm their legal equality. Legal equality is the basis of political justice.

However, what about the people who, for various reasons, do not meet those conditions? There are citizens who are not independent or cooperative, and might not even reach the expected level of rationality. Can a political community apply the

principles of political justice to them? Does it relate to them unfairly excluding them from political relationships or building relationships with them on sympathy and compassion?

Can compassion and empathy replace justice and the right to obtain justice?

„CITIZENS“ AND DISABILITY

In attempt to define what it means to be a citizen, we reach for Aristotle's politics. For Aristotle, citizenship status defines engagements in judiciary and in other political activities. It means that being a citizen is a legal statue defined by a set of rights and responsibilities but it also stands for identity and an expression of membership in a political community. The concept of citizenship is determined by two constituent elements: rights and identity. All this confirms the attitude of Bruce Ackerman that citizenship is a political, not a biological concept, and that the status of citizen is defined by a political decision. (1:74) We do not become a citizen by birth. We have to satisfy certain criteria, which political community has set for us. Criteria are rationality, cooperation, independence etc. Immanuel Kant, in his definition of citizen, has distinguished active and passive citizen, and a fundamental difference between them was the attribute of civic autonomy. Passive citizens are free and equal persons, but as citizens they depend on someone. [2:106]

In ancient times the polis was a holder of the rights, not the citizens. The process of historical development separated the individual from the polis/political community and made him a holder of rights and duties. In that situation justice, in addition to being recognized as a virtue of each individual, remains dependent on the political community. Justice becomes/remains a subject of a social structure. According to John Rawls, social structure is

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the subject of justice, and a citizen is just a participant who gives consent to a particular contractual concept of justice. Contractual concept of justice assumes that the participants of the contract, citizens, are rational, mature and capable of normal levels of social cooperation and productivity. Otherwise the concept of justice would not be fair because it would be based on the mutual cooperation. But, there are people who do not meet these universal forms of capabilities in their individual content and they are not capable for reciprocity. Realistically, at some point in life we all were or will be incapable in some way and dependent on others. These are the stages of childhood, illness and old age. What would that mean that in those phases or situations we cannot be treated as citizens and partakers in the fair relationship? When making decisions a court takes into account a number of mitigating circumstances. However, special needs are not extenuating circumstances, but the everyday reality of a certain part of a political community.

In December 1975, *United Nations General Assembly* has proclaimed resolution 3447 - *Declaration on the Rights on the Disabled Persons*. This resolution define 'disable person' as "any person unable to ensure by himself or herself, wholly or partly, the necessities of a normal individual and/or social life, as a result of deficiency, either congenital or not, in his or her physical or mental capabilities". [3]

The International Classification of Impairments, Disabilities and Handicaps (ICIDH) [4], provides a conceptual framework for disability which is described in three dimensions - impairment, disability and handicap [5]:

a) **Impairment:** In the context of health experience impairment is any loss or abnormality of psychological, physiological or anatomical structure or function. Impairment is considered to occur at the level of organ or system function. Disability is concerned with functional performance or activity, affecting the whole person;

b) **Disability:** In the context of health experience a disability is any restriction or lack (resulting from an impairment) of ability to perform an activity in the manner or within the range considered normal for a human being;

c) **Handicap:** In the context of health experience a handicap is a disadvantage for a given individual, resulting from an impairment or a disability, that limits or prevents the fulfilment of a role that is normal (depending on age, sex, and social and cultural factors) for that individual.

In the article "The Social Justice Perspective", authors Loewen and Pollard have showed evolution of the *disability*

language – from a cripple to a disable person: cripple (invalid person is abnormal and is outside of the norm of society)→ handicapped person (abnormal, different, and needs a cure to belong)→ person with a disability: person (has an abnormality, and with a cure, can belong)→ disabled person: person (is part of diversity of society, and can be proud of their difference). [6:11]

Changes in language indicate a change in the minds and make differences (or distinctions) more obvious. Although today's culture and laws pay special attention to the protection of human rights and respect for people, and devote particular attention to disabled persons, almost all indicators of disabled persons' participation in everyday life give devastating results, whether it is a question of employment, income level, appropriate housing, public transport and buildings, access to information, participation in public and political life of the community or of leisure. Given that these persons are not independent, they cannot be classified as full-fledged citizens, and for that reason they are usually victims of injustice. Society often tries to compensate injustice with sympathy and compassion.

CONCEPTS OF JUSTICE AND DISABILITY

According to David Hume justice makes sense only when the situation is indeterminate i.e. in the middle of moderate scarcity and moderate wealth, when people are selfish and competitive but still able to restrict their behaviour. According to Iris Marion Young, the dominant conceptions of justice understand justice as the distribution of material goods and disregarded institutional context that determines the distribution patterns.

"Give to everyone what you owe them" even in Ancient times was understood as the basis of distributive justice. Aristotle is precise when stating that distributive justice is realized when everyone gets rewards according to their merits. This kind of distribution in a certain way compensates persons' efforts, meaning that one gets what one deserves. Young holds that the biggest problem of distributive paradigm lies in the fact that it does not recognize the limitations of logical distribution. There is a wrong or

incomplete social ontology. Young believes that the issues of social ontology are important for the understanding of justice because any normative statement about society contains implicit assumptions about the nature of society. That is the reason why we are silent about the fact that all the members are not independent, autonomous and cooperating citizens. For that reason a certain group of people, disabled persons, can be excluded from the concept of justice. "For a norm to be just, everyone who follows it must in principle have an effective voice in its consideration and be able to agree to it without coercion. For a social condition to be just, it must enable all to meet their needs and exercise their freedom; thus justice requires that all be able to express their needs." [7:34]

Any form of negligence contributes to injustice, but every form of assistance is not a just treatment. Amartya Sen says that people with physical and mental defects are among the most neglected and society

The principle of equality

Egalitarian conception of justice is based on the fundamental principle of justice - equality. Just distribution can be accomplished if each member in distribution receives an equal share. This is actually the simplest model of distribution, but it is actually the most complex because it finishes in the easiest way in injustice. In such distribution, those with major disability can be ignored, lazy rewarded and talented and hardworking discouraged. People, because they differ in terms of their skills, their interests and preferences often will not even encourage strictly equal distribution.

Gerald Allan Cohen believes that we have arbitrarily start a discussion about justice in terms of equality, and then we have simply moved from equality to inequality because we accepted 'reward' or 'incentives' to become an essential instru-

ment of efficiency in the society. We can offer help because of compassion and pity, however, even though such behaviour is desirable and appropriate, it is not sufficient according to social responsibility. The goals of the disability rights movement are the same as those of the civil rights movement, women's rights and LGBT community. They seek for equal recognition, the right to dignity, economic and social equality, usable experience, involvement and the right to full participation in education, employment and all social activities.

Here we will focus on analysis of relations between major concepts of distributive justice and disabled persons. The main constituents of distributive justice are: the principle of equality ("Everyone deserves equal"), the principle of merit ("Everyone according to the merits") and the principle of need ("To each according to their needs"). [8:62] This analysis we will conclude with the diverse concept of justice, which pays special attention to disabled persons.

ment of efficiency in the society. Egalitarians actually still struggle with the fact that it is impossible to measure attitude between the amount of income and wealth. Wealth also comes in the form of a public good, so it is difficult to ensure everyone equal share. According to Rodney G. Peffer, only a totalitarian state could provide that kind of equality, but even in that situation it would hardly be feasible. Society should ensure equal opportunity for everyone (substantive, not formal one) to reach the social good. According to Cohen, an ideal egalitarian society is not the one in which citizens act altruistically and self-limiting in everyday life, but one in which there is the effective egalitarian ethos. The ethos of a society is the set of sentiments and attitudes in virtue of which its normal practices and informal pressures are what they are. That is

what justice requires - an ethos governing daily choice which goes beyond that one of obedience to just rules. [9:136] „The egalitarian response to disability seems to defeat not only equality of welfare but also equality of opportunity for welfare.“ [10:918] Accordingly, Ronald Dworkin considers two general theories of distributional equality: equality of resources and equality of welfare. [11:12]

a) Equality of resources

“(Equality of resources) holds that it treats them as equals when it distributes or transfers so that no further transfer would leave their shares of the total resources more equal.” [12:12] Equality of resources requires that the first distribution meets the criteria of equality, and everything else can depend on the skills, hard work and luck. Ronald Dworkin believes that the social inequalities which result from the difference in income and wealth, are in accordance with the principle of equal initial resources. It is a matter of responsibility, willingness to take risks and the desire to win. This theory is 'sensitive to ambitions', i.e. it does not require the equality of resources to be permanent. Someone is willing to spend more, take the plunge and as result get less. It is a personal choice. Mark Stein says that Dworkin's theory contained elements of egalitarianism which then turn into libertarianism. True, it is the left libertarianism or so-called meritocracy. In the hypothetical situation that Dworkin implies, people are not familiar with their capabilities. R. Dworkin starts from the premise of equality and equal ability but introduces the concept of 'security' as a link between those who lose and those who win the 'gambling'. Insurance can be bought at the initial auction, and the collected money is used for the compensation to all those who are in the process of 'gambling' had bad luck, regardless of whether it is the matter of

disability or lack of good luck. In this way, society tries to remove from the influences of factors for which individuals are not to be blamed from the distribution. Dworkin takes a so-called *envy-test* as the criterion of justice distribution. This test proves the distribution of goods not to be satisfactory if after it a person envies someone else because a bundle of resources he has received.

R. Dworkin thus confirms his own assumption that each individual in a liberal democratic society has the 'right to equal treatment' in terms of the equal distribution of opportunities, goods and burden, and also the 'right to be treated as equal' in the sense of equal concern and respect. We can call it 'delayed justice'. It corrects the injustice subsequently even though it is a result of principle of equality. For the disabled persons the right for the equal treatment is actually a kind of mockery. Disabled person and non-disability person are not equal, but when you treat them as unequal, you have already fallen into the trap of injustice.

Dworkin's concept of justice tries to correct Rawls's concept of distributive justice - justice as fairness. In justice as fairness equal distribution of primary goods is the first step in realisation justice in society. According to Rawls, the primary social goods are the rights, freedoms and opportunities, income and wealth, and social basis of self-esteem. The most important primary good is the social basis of self-esteem. According to Amartya Sen, the index of primary goods would satisfy elements of justice if people are fundamentally equal. However, people have different needs and different abilities, so they do not have the same possibility to use primary goods. Rawls assumes that all members of a well-order society have at least a minimum level of moral, intellectual and physical abilities to be fully cooperative members of society. For that reason his concept of justice is not appropriate for disabled persons.

“So let's add that all citizens are fully cooperating members of society over the course of a complete life. This means that everyone has sufficient intellectual powers to play a normal part in society, and no one suffers from unusual needs that are especially difficult to fulfil, for example, unusual and costly medical requirements.” [13:546] According to John Rawls the concept of justice as fairness is established for 'normal cases' and later would be extended to other cases. Rawls has excluded disabled persons from the distribution of primary goods. “Indeed, it can be argued that there is, in fact, an element of ‘fetishism’ in the Rawlsian framework. Rawls takes primary goods as the embodiment of advantage, rather than taking advantage to be a relationship between persons and goods.” [14:218]

b) Equality of welfare

The relationship between persons and goods, i.e., how people can use the assigned goods is the most important element for A. Sen's concept of justice. He advocates 'equality of welfare', but one that takes into account the ability. For 'equality of welfare' initial distribution is not essential, but the ultimate goal to be achieved. The idea of the capabilities is associated with the substantial freedom, and focused on human life in its entirety, not just the resources that people possess. The idea of capabilities questioned whether wealth can be the main criterion of success? Sen refers to Aristotle, who in *Nicomachean Ethics* (Book I) states that wealth is evidently not the good we are seeking; for it is merely useful and for the sake of something else. [15:7] A person with a disability need not really be judged to be more advantaged than an able-bodied person even if he or she has a higher level of income or wealth than the thoroughly fit person. [16] According to Sen, we have to examine the

overall capabilities that any person has to be able to conclude whether one leads or does not lead life which satisfies one. This requires that attention be paid to one's personal characteristics (including one's disabilities if any) as well as to one's income and other resources, since both can influence one's actual capabilities. It is important that a distributive theory of justice does not confuse ends and means. Income and wealth are always means for something else.

Mark Stein believes that egalitarianism does not provide justice to disabled persons because the equality of resources provides too little of resources for them although realistically gives equally, and equality of welfare gives them too much, even they do not have benefit of it. It shows that the elements of utilitarianism are openly present in work of A. Sen, and hidden in the work of R. Dworkin. [17:7]

“The first (which I shall call equality of welfare) holds that a distributional scheme treats people as equals when it distributes or transfers resources among them until no further transfer would leave them more equal in welfare.” [18:12]

What is the problem with the theory of utilitarianism, which is aimed to achieve an adequate level of prosperity in the society? Consequentialism, welfarism and sum-ranking are the three component of utilitarianism. According to A. Sen the three components together yield the classic utilitarian formula of judging every choice by the sum total of utilities generated through that choice. [19:59] Utilitarianism takes into account the total 'relative income'. Striving that maximizes total welfare; utilitarianism would be willing to use all available resources to improve the situation of disabled persons. But some disabled persons think that disability does not in itself reduce welfare; they hold society's treatment of the disabled is what reduces their welfare. [20:37] Resources should be, considered Stein, focused on providing better social

conditions, for example by increasing various forms of assistance. According to utilitarianism it is necessary to consider what resources are required to achieve the maximum benefit to the disabled persons, but so that their well-being is instrumental to increasing the welfare of other persons. Stein gives an example that utilitarianism would rather use resources to feed a large number of persons who would otherwise live in a state of constant hunger than buy motorized wheelchairs which can provide great benefits to some paraplegics. If you estimate that the investment is large and the gain is small, redistribution does not make sense, but the resource should be directed where it will bring greater utility. [21:37]

“The utilitarian maximand discriminates against a person who is uniformly handicapped in converting income into utility (since she would be seen as an ‘inefficient’ utility maker, with a low utility-generating ability). The utilitarian logic is insensitive to the fact that giving her less

income would *compound* the lowness of her utility-generating capacity: she would get a lower total income in addition to having lower utility *per unit* of income.” [22:16-17] Amartya Sen believes that it is extremely important to distinguish between two types of restrictions that go along with disability: ‘acquired limitation’ and ‘transformed’ limitation. Disabled persons have problems finding a job, and have to strive harder to retain it. Acquired limitation is very significant for the equality of welfare theory because, in most cases, wealth is unattainable for disabled persons. But this is only one part of the problem. Another part lies in the fact that disabled persons need more resources to accomplish the same tasks as healthy individuals (e. g. movement). Disabled persons are the converted restriction’s victims because they usually do not succeed to convert money into a good living. Money alone or the welfare does not solve the problems of disabled persons.

Principle of merit

Distribution is justified when everyone gets what they deserve. Aristotle advocates distributive justice in which the merit was assessed on the basis of realized virtue. J. Locke holds that in civil society government has to ensure that everyone gets what they deserve based on honest work. The starting point is the formal equality. Persons are equal and have the equal rights, but differ in terms of their capabilities. Everything persons acquired thanks to their own abilities is justly acquired. Differences in ability are a matter of luck and cannot be subject of just relationship. Distributive principle of merit is just when the goods are distributed on the basis of merit which is the result of an effort, a hard work and dedication.

Merit can be understood in several ways: as a contribution to a society an

(individual deserves the award due to the value of the contribution), as a result of hard work and effort an (individual deserves the award due to the effort) and as a result of compensation (the award is in line with costs). The principles of merit assume that an activity contributing to the increase of social productivity and improving living conditions has priority in rewarding. It is necessary to distinguish between merits and rights. A person may be entitled to something without having deserved it. A person can deserve something but have no right to that. The principle of merit is problematic because it is quite difficult to define what should and should not be included in the merit. Economic conditions in which persons act are not always under control, so it is difficult to determine which

persons are deserving of it and what the result of circumstances or fortune may be. Libertarians, such as Friedrich A. Hayek and Robert Nozick, considered the result of market relations to be just. Market is essential to the achievement of liberty, and if the exchange of goods in the market is voluntary, its outcome is just. An individual is entitled to everything he has earned whether by fortune or effort. If the agreed procedural rules are met and no violence has been used while taking the resources then we can talk about justice.

One should not forget that taking natural resources must not leave others in a worse position than their previous.

R. . Nozick raises the question whether the differences among persons should be justified and whether the inequality should be corrected or recouped. People have the right to use their natural abilities even if they don't deserve them and no one has the right to deny them the goods obtained using those abilities. Ownership of one's natural assets does not violate anyone else's ('Lockean') entitlements and rights. [23:225] If one were forced to use one's natural capacities in another's interest, then one could be considered only as means to achieve a goal.

The above-mentioned theory of Ronald Dworkin corresponds to the principles of merit and meritocracy. Friedrich A. Hayek sees meritocracy as the Trojan horse of socialism. According to his belief the equality of opportunity has the status of a legitimate request in a free society in terms of removing all the obstacles that prevent equal access to positions in a given society. One of the models to ensure the equal starting possibilities is the introduction of the progressive income tax. In the work of *Individualism and Economic Order*, Hayek states that the progressive income tax aims

egalitarianism. It prevents the accumulation of a wealth and leads to the removal of the most important element of a free society, and that is the independence in terms of resources that enable maintenance of free thinking and the independence of the management by the government. Pensions, as well as the care for the elderly, are not paid from the accumulated fund but from an existing tax. Free health care for everyone is an unfulfillable request because there is no criterion on which we could rely in determining the necessary medical care and there is no certain amount of money that could be justified solely on the sick person's necessities. "It has always been – and will always be – necessary to make difficult choices, to set a balance between such values as health and life against material advantages." [24:72] If freedom is to be valued in such a way as to improve the material standard of living, then the argument for freedom would be utilitarian, but freedom is freedom when individuals are able to determine their best interest allowed.

A. Sen has a different vision of freedom. He sees freedom as the capacity for quality life. Focusing on quality of life and substantial freedom, he focuses on human life in its entirety, and not just on the resources that people have (e.g. rich man in a wheelchair?). That idea of capabilities brings into question whether the wealth and earnings are the fundamental criterion of success. Sen seeks distinction between (i) the derivative importance of freedom (dependent only on its actual use and (ii) the intrinsic importance of freedom (in making us free to choose something we may or may not actually choose). [25:292]. „It does make a difference whether we look merely at the means of living rather than directly at the lives that people manage to have.“ [26:227]

The principle of needs

In his book "Natural Law and Human Dignity," Ernst Bloch says that the most important human right or so called subjective right that applies to satisfy the needs. [27:299] The idea of the need is closely associated with Karl Marx, although he did not develop the concept of distributive justice. Marxists believe that the distributive justice is a part of bourgeois ideology that defends the capitalist welfare state by supporting the class society, justifying the existence of the least advantaged. [28:367]

“In a higher phase of communist society, after the enslaving subordination of the individual to the division of labour, and therewith also the antithesis between mental and physical labour, has vanished; after labour has become not only a means of life but life’s prime want; after the productive forces have also increased with the all-around development of the individual, and all the springs of co-operative wealth flow more abundantly — only then can the narrow horizon of bourgeois right be crossed in its entirety and society inscribe on its banners: From each according to his ability, to each according to his needs!“ [29:11] K. Marx did not think of humans as intellectual beings only. It was not in accordance with the materialism he introduced. Human intelligence is derived and not fundamental because the conditions that determine the mind are external. At the beginning there was a human need and then the human mind found a way to satisfy that need through the production.

The principle 'to each according to needs' attempts to distribute community goods to meet the needs of each individual. However, the question is: what is the need? A fad or a desire? Can the right to needs directly mean the right to justice?

In accordance with that question we can distinguish intrinsic and categorical or

fundamental needs. The difference between them is whether they are instrumental or not. What we need is 'necessary'. The necessity arises from the particular circumstances in which the person is located. If you are hungry, it is necessary to get food. But if you are hungry and you ask for something sweet, than it is not a need but a fad or a desire. There is also a difference between what people need and what they think they need - for example, the need to satisfy their ambitions and intentions. Liberal view is that people should be held responsible for their life choices, so there should not be any claims for justice. It is considered that there are no preconditions for justice even if a person is not responsible for her own, in a way extravagant and socially determined needs.

Amartya Sen believes that needs should be understood in terms of the possibilities of functioning in different ways. Each person should be able to read and write, move, keep a job, get married and have a family, etc. Understood in this way needs should be explained as the conditions that enable person to lead a minimally decent life. One's priorities, no matter how strong they may be, cannot be taken as the basis of needs for all. Different people have different needs so it is impossible to make a single survey. Sometimes the priority is given to those who are in the greatest need but sometimes it is not like that. For example, during the war, military doctors used to divide the patients into three groups according to their survivability chances. In a warfare situation with the lack of medication and health care, exactly those individuals whose needs are greatest will not be able to satisfy them. If we cannot meet everybody's needs in the same way, at least we have to show to everybody the same degree of respect.

Discussing whether the distribution based on the needs is a matter of justice or generosity and humanism, David Miller cites the example of one kidney and 7 patients who are waiting for it. All have the same need and the same condition and there is no way to make a distinction between them. No matter which patient will be chosen we will apply comparative justice because it represents the same needs access needs. If you choose not to donate a kidney to anyone it would be unfair to non-comparative justice (wasted resources). Hence there is a need for some kind of just procedures - such as a

Capability approach

“Capability theorists seek an institutional order under which resources are so distributed that the resulting distributive pattern of individual capabilities - dependent on individual endowments and resources - satisfies their preferred criterion.“ [31:39-40] Capability approach to justice is completely different because it is aimed at disabled persons. Conceptual creators of this approach are Amartya Sen and Martha C. Nussbaum. We are already familiar with the Amartya Sen theory so here we will present the Martha C. Nussbaum theory. She creates her approach as a critique of the dominant conception of justice as contract theory and utilitarianism, but also as an attempt to make correction of Rawls' justice as fairness.

M. C. Nussbaum is quite open to Rawls' concept of justice even though he explicitly states that the concept of justice as fairness is not designed for disabled persons, but only for a full cooperating members. Although the principles of justice as fairness are chosen in the original position behind the veil of ignorance, and therefore there is a possibility that the chosen principles can be applied to all members of society, Rawls, as a contractual theorist, advocates mutual profit. If Rawls had included benevolent motivation in the original position which

lottery between patients, or the patients' agreement among themselves. Procedural justice requires that anyone who is involved in the distribution has the right to equal treatment participation. [30:98]

Critics argue that need is a powerful moral imperative but it is the matter of kindness or humanity rather than justice. Justice has to do with merit, keeping promises and applying the rules. Miller believes that justice is concerned about the equal distribution of goods among individuals and not about well-being or happiness that those goods bring them.

Nussbaum objects, then the idea of mutual profit would be excluded automatically and the selected principles could be applied to disabled persons. However, J.Rawls did not include benevolent motivation in the original position he thought it uncommon, unequal and inappropriate to support the predefined political principles.

In this context, only the principle of difference, which takes care of the least advantaged member of society, put under control the influence of the element of luck, but only that one effectuated at the market. However, is it not the lack of luck in the nature's lottery to be born as a disabled person or to become one? It's true, but Rawls takes into account only the wealth, not the ability.

Martha Nussbaum says that justice should be one of our goals in life, and we limit this goal every time we understand justice as a result of the mutual advantage arising from the contract. “When we reach the case of mental disability, we see with utter clarity the extent to which the idea of mutual advantage distorts our understanding of the benefits of social cooperation.” [32:130] We limit ourselves, even when we understand justice as reciprocity between roughly equal individuals because we have

left outside of this relationship a large number of those who do not meet criteria of roughly equality. Criteria of equality in contract theory are the ability to co-operation and collaboration, and this ability is based on full rationality. M. Nussbaum criticizes this approach by stating that if we understand that dignity of person is based on pure morality and rationality, and to them it does not require physicality, that these beings are like angels, and not people who have a need for other people. [33:132] “But if this is so, justice makes sense wherever human beings are around. Human beings want to live together, and they want to live together well, which they understand to include living in accordance with justice.” [34:86] Human beings are dependent beings, because, as Aristotle said, if they are self-sufficient, they are either an animal or a god, but human certainly are not.

“Moralities built on the image of the independent, autonomous, rational individual largely overlook the reality of human dependence and the morality for which it calls.” [35:10] Rationality and *animality* are two inseparable parts of human personality. According to Aristotle, man is *zoon politicon*, according to Marx man is a being who develops during a lifetime. Rationality is understood only one form of *animality*, and it is considered that it is not appropriate to use rationality as *differentium specificum* that determines all other conditions. Rationality in 'capability

approach' is understood as a form of practical decision-making that enables us to take care of others. It is also an aspect of human dignity. In 'capability approach', Nussbaum explains human nature as 'ethically evaluative' starting from some elements that are essential for the full dignity of human life because they are irreplaceable.

Capability approach is based on the assumption that there are ten capabilities that need to be fulfilled for human life to be considered dignified. The list is open-ended, is not complete and will be subject of modifications. The central human capabilities: 1) life, 2) bodily health, 3) bodily integrity, 4) senses, imagination and thought, 5) emotions, 6) practical reason 7) affiliation, 8) other species, 9) play, 10) control over one's environment – political and material. [36:76-78] Nussbaum assumes that if the society provides the conditions for the implementation of the ten capabilities, we could say that society is just and for disabled persons as well. In fact, capability approach is completely universal because the meeting of these capabilities is crucial for every person, in every state and every person is treated as an end. [37:78] However, this concept is not intended to perform a complete statement of social justice because there is a number of political and other values that have to be taken into account. Political procedure, which relies on access to capabilities, is not fixed but variable given the circumstances and the historical period.

CAPABILITIES AND PRIMARY GOODS (RESOURCES)

In political theory and philosophy, as stated by Ingrid Robeyns and Harry Brighouse, over the last decades there is a discussion about the proper metric of justice. So what should be taken into account when we judge about justice: the distribution of happiness, wealth, life chance, or some

combination of all elements? [38:1] Robeyns and Brighouse state that the two concepts - the concept of primary goods of John Rawls and capability approach presented in Sen and Nussbaum's works - offer the most appropriate answers to this question. In this paper we have analyzed the

concept of justice starting from the principle of equality, equality of resources, equality of welfare and the principle of merit. All these concepts more or less have the ideal of equality in because justice is, as Aristotle has said, what is equal and what is legal. However, the principle of needs and the capability approach have a different view of the ideal of equality.

Rawls' concept of justice as fairness is based on the principle of equal distribution of social primary goods. They are as we have already seen, distributed equally regardless of the differences among individuals. And that is exactly what A. Sen criticizes. "Primary goods, he argues, can not adequately account for differences among individuals in their abilities to convert these primary goods into what people are able to be and to do in their lives." [39:4] In his theory, J. Rawls points out that all participants have physical needs and psychological capacities within the normal range. He has excluded people with sever physical or mental disabilities from the scope of justice as fairness. However, in his later works (reissue of *A Theory of Justice*, 1999, and *Justice as fairness. A Restatement* in 2001) J. Rawls included some kinds of disability (such as medical problems and learning disabilities). Erin Kelly advocates the principle of primary goods. She believes that people can agree on the goods to which they all find important. Primary goods represent the all-purpose means persons need to accomplish their own aims in cooperation with others. [40:63] According to Rawls, primary goods are suitable for all those who have developed a minimum of the moral personality that is the minimum necessary for a sense of justice. "Variations in the capacities of persons for rationality and fair dealings do not threaten the equal standing of persons." [41:63] The problem is that this concept does not refer to persons who fall below the normal range of functioning as cooperating members of

society. Erin Kelly writes that domain of justice need not represent the limits of our obligation to other persons. She proposes a different source of ethical obligation (duties of assistance) for persons who are unable to engage productively with others in society. [42:64] But justice is more than just ethical obligation.

"Primary goods suffers from fetishist handicap in being concerned with goods, and even though the list of goods is specified in a broad and inclusive way, encompassing rights, liberties, opportunities, income, wealth, and the social basis of self-respect, it still is concerned with good things rather than with what these good things do to human beings." [43:218] In his text *Equality of what?* Amartya Sen presents capability metric as a replacement or supplement to metric based on primary goods. If persons are similar or identical, then the metric based on primary goods make sense, but individuals differ in many ways. "Judging advantage purely in terms of primary goods leads to a partially blind morality." [44:216] Any sort of distributive justice must therefore determine two things: metrics and rules. Metrics indicates the type of goods that the act requests and rules are instructions on how to distribute the goods. There is a difference between subjective measures that can be explained as the happiness or satisfaction, and objective measures like functions and resources. Resources are, of course, external (income, wealth, legal rights), and functions are related to health care, mobility and the ability to appear in public without shame.

Elizabeth Anderson claims that it is necessary to make a distinction between the theory of resources and the theory of capabilities. Theories based on resources are focused on resources (equality of resources), and theory based on capabilities are focused on the goal (equality of welfare). These theories differ in how their principles of justice are sensitive to the 'internal'

differences between individuals and exterior features that are associated with internal differences. Theory based on the resources requires the existence of the basic social structure so all people can have access to the equal package of resources which is considered to be sufficient for the functioning. Theory based on the capabilities requires that social structure ensures customized 'package of resources' for each person according to a person's ability to be able to convert resources into means of functioning. As a solution Elizabeth Anderson offers a politically defined theory base on capabilities and understood as democratic equality. According to this approach, all citizens in democratically organized society are entitled to the same capabilities assuming that there are opportunities for it. Equal capabilities allow the equal functioning in the society (health care, safety, nutrition, education, mobility, communication, ability to interact and cooperation).

Theory of resources and theory of capabilities agree that the concept of justice seeks to ensure that every person has the access to the funds he or she needs to function. So if we assume that resources are the means to achieve the goals (enabling persons to satisfy their objective interests), that means that they are objective interests of each person. Anderson says that it makes more sense and would be better it would be

JUSTICE AS THE GOOD OF OTHERS

We have seen that the main constituents of distributive justice, the principle of equality, the principle of merit and the principle of needs, are not successful with the realization of justice for disabled persons. As M. Stein has mentioned, egalitarianism does not provide justice for disabled persons because the equality of resources gives too little, although

better to measure the justice of a society in terms of the end - capabilities - rather than the means. In fact, why choose indirect measures, when a direct measure is available. [45:88] The goal of justice is to ensure the capabilities of all individuals, so that they can function as equals in society. "Only in the area of self-respect and dignity itself do I think that actual functioning is the appropriate aim of public policy." [46:172]

Capability approach highlights the need to ensure the conditions for the quality management of life as a whole, which means the possibility of functioning as a whole person, rather than to achieve functional performance in only one part of life. People have to have the opportunity to choose whether to take advantage of this option or not, but the society needs to provide a choice for every individual if we considered a society as a system of justice.

„A capability metric is superior to any subjective metric because only an objective metric, such as capability, can satisfy the demand for a public criterion of justice for the basic structure of society. It is superior to a resource metric because it focuses on ends rather than means, can better handle discrimination against the disabled, is properly sensitive to individual variations in functioning that have democratic import, and is well-suited to guide the just delivery of public services, especially in health and education.“ [47:81]

realistically it gives equally, and the equality of welfare gives them too much, though realistically they do not have real benefit of it. For meritocracy, differences in ability are a matter of chance and cannot be subject of justice, and everything else comes down to providing extra assistance that falls within supra-obligations. The principle of need may be the closest attempt to deal with the

problem of disability justice, but raises the question of how to define the needs and whether the distribution based on the needs is a matter of justice or a matter of generosity and humanism. The disability justice issue is not realistic, but should rather be taken as a theoretical arrangement because we believe that the easiest way to achieve justice is mathematically using the arithmetic and geometric scale rather than taking into account the specifics of each case for itself. Justice conceived as equality and legality is based on the assumption that the law has to ensure equal treatment for all but equal in terms of recognition and respect for diversity. Living together we are focused on each other, so the right concept of justice would include striving for the good of others. This was pointed out even in the work of Plato and Aristotle. By taking care about the good of others, we also take care about the possible future. „To be sure, nobody is ever self-sufficient; the independence we enjoy is always both temporary and partial, and it is good to be reminded of that fact by a theory that also stresses the importance of care in time of dependency.“ [48:218-219]

According to M. Nussbaum , the public conception of a person cannot imagine a life where you do not share the goals and your life with others. Living with others, besides justice and benevolence, is the integral part of the conception of a public person. “The good of others is not just a constrain of this person's pursuit of her own good, it is a part of her good.” [49:158] The capability approach from the beginning includes the elements of benevolence because it holds that the relationship between an individual and common human goals should be based on those elements.

As the good of the other is an important component of scheme objectives and resources of each of us, then it becomes clear why we develop benevolent attitude towards disabled persons. And of course, it

will not just be the result of moral sense that we own, but also the result of the choices we make. Justice is conceived as good for others for its stronghold asks for the ethics of care. Care is closely associated with abilities. A caring attitude enables and supports the quality of disabled persons' lives. It encourages the development of feelings and imagination, eliminates exaggerated fear and anxiety, promotes association and protects the basis of self-esteem. The ethics of care advocated by Virginia Held positively evaluated emotions such as compassion, empathy, sensitivity etc. The dominant moral theories seek to interpret the moral problems as a conflict between the egoistic individual interests on the one hand, and universal moral principles, on the other. The ethics of care focuses on the area between these extremes.

“Care and justice, then, cannot be allocated to the separate spheres of the private and the public. But they are different, and they are not always compatible.” [50:69] The subject of ethics of care is a person who is in a relationship with others and not a self-sufficient person only focused on himself. A person who is in a relationship with others is not egotistical or altruistic but understands relationships as the act of a self-and-other together. The ethics of care takes a person as a dependent and relational being in a moral and epistemological way. Caring can be realised without justice, but without caring, there is no room for the implementation of justice. For example, no child could survive without being taken care of.

However, the ethics of care concerns people who constantly take care of others and that usually refers to family members. Caring is needed for all the children, the sick, the old, and some people are in the need of permanent care during their lives. Providing care for those in need should be the imperative and the main interest in politics because it is a shared responsibility, and not just a personal or charities'

responsibility. Care and concern should be shared more equitably within the society.

“We could then recognize basic well-being, or welfare, as something to which each person is entitled by right under condi-

tions of need and ability of the society to provide. Welfare rights would be recognized as basic rights guaranteeing persons the resources needed to live.” [51:69]

CONCLUSION

It is extremely problematic to talk about disabilities in an unambiguous way. When placing all the disabled persons on the same level, we commit the same injustice they suffer from those who place them on the same level as non-disabled persons. In this paper, of course, we could not discuss each particular disability. Special needs, as the name suggests, indicate that each case should be approached individually.

Therefore, justice can be achieved only when all diversities are included in the discourse.

The capability approach to justice is different. It takes into account the resources, the capabilities, the objectives and the welfare of any form. It also includes the basic maxim of justice being the good of others which is accomplished through the relationships.

Aristotle believes a good man to have political and social qualities. Justice is reflected in the result. Martha Nussbaum holds that it is more important to preserve the quality of life than just strive to satisfy the requirements of a justice process.

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