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Robert Salais

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INSTITUTIONS ET DYNAMIQUES
HISTORIQUES DE L'ECONOMIE
UMR CNRS 8533

Bâtiment Laplace - Ecole Normale Supérieure de Cachan
61 avenue du Président Wilson - 94235 Cachan Cedex
Tél. : 01.47.40.68.40 - Fax. : 01.47.40.68.42.
e-mail : morey@idhe.ens-cachan.fr

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The Contours of A Pragmatic Theory of "Situated" Institutions And its Economic Relevance¹

By Robert Salais

(IDHE, Ecole Normale Supérieure de Cachan, Paris)

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¹ I was helped by numerous discussions within IDHE and with the students who attended my seminar in the Economics of Institutions degree programme. This contribution heavily draws on Salais, 1998, while pursuing its line of thought. For a general look to the school "économie des conventions", see *Revue économique*, 1989; Orléan, ed., 1994 and Salais, Chatel, Rivaud-Danset, eds., 1998.

The research programme which in the social sciences in France is called "the economics of conventions" focuses on economic coordination. Insofar as is possible it avoids adopting a holistic point of view concerning institutions, but without considering that they are the product of rational calculation. By "convention" the programme designates all systems of mutual expectations, following in the steps of David Lewis (1969). By contrast institutions are understood as collective and intentional objects (Salais, 1998). These objects are conceived for the purpose of implementing a normative intention. To this end institutions incorporate a conception of the role expected of the State. Empirically they take the form of "coherent systems of rules, linked to a clearly identifiable collective entity, and generally recognised by law" (Favereau, 1997). Convention and institution are thus different in nature, although related to each other. The "economics of conventions" programme takes conventions to be the foundation of the solutions that actors find to solve ordinary coordination problems. It is thus possible to avoid having to call upon institutions at all times. For it is clear that as long as situations of coordination stem from a shared set of regularities, people do not need institutions to know how to act. Conventions and the salience of material landmarks suffice. This empirical evidence militates in favour of what we will call a "situated" approach. When based on this approach, the problem of institutions in economic theory should be centred on the role that institutions play in specific situations, those of uncertainty. For in these cases they supplement the recourse to conventions, offering something more, i.e. the guarantee that if a problem arises threatening to jeopardise the anticipated outcome, each party will be treated fairly. Institutions constitute the objects towards which these expectations of fairness converge. Conventions and institutions are nevertheless linked by the fact that they are both anchored in situations of coordination and mobilised by the agents in their actions².

To anchor our thinking in economics we have tried to undertake a renewed exploration of the debate regarding theories of social choice.³ For this debate seems to share assumptions that are close to ours. How far can we pursue these assumptions? When and how must we leave the path they follow? In the wake of Arrow, five authors are central: James Buchanan, Frederich Hayek, John Rawls, John Harsanyi, Amartya Sen. For reasons of space we will concentrate principally on Rawls and Sen. Our line of reasoning is sketched out below.

Rawls' work constitutes a possible point of departure for building a theory of "situated" institutions. First of all, he reintroduces collective values into economic coordination. He shapes these values not as yet another instrument of manipulation of others in the coordinated framework, but as a mutually anticipated reference of actions, thus substituting an action endowed with reasonableness for rational action. Secondly, he conceives of an institution as a "practice", which leads him to treat it in the context in which it is implemented. Thirdly, by setting up a common knowledge of the institution (cf. Lewis), the latter is given a guarantee of "publicity", of that which makes it public. But this is not enough. Harsanyi, in the figure of "impartial spectator", underscores the problem arising from the absence of the State as such in Rawls' contractualist construction. Sen notes that Rawls' equal liberty is not sufficiently spelled out: the judgement in equity issued by institutions must take into account the

² We must remind the reader that the notions of uncertainty and convention were familiar to Inter-war institutionalist economists, like Knight or Keynes. For instance, remember the chapter 12 of the *General Theory of Employment, Interest and Money*. The "economics of conventions" tries to follow the same path, but in the configuration of economics today. See references quoted above.

³ To avoid any ambiguity, let us specify right away that "social choice" is to be taken to mean "collective choice" and not understood in opposition to economics.

opportunities that are actually open to all, here and now, in the course of daily life. At the heart of this judgement is the construction of an adequate informational basis that outlines the "territory in which the considerations of justice are directly applicable".

Apprehending institutions in situations means analysing the ways in which they are present in collective action. How do they contribute to the shaping of mutual expectations concerning the practical progression of the coordination? Our hypothesis is that the recourse to institutions, when it occurs, transforms collective action into public action. At this moment a local conventional agreement is formed among participants as to the definition of the common good. In other words there is among them a "convention of the State" to which their actions will refer. This is a pragmatic process that relies on the resources offered by the institutions. This agreement provides the basis for evaluating the action undertaken; it qualifies the relevant situation and gives the common description which provides a framework for the action of each party. The actors thus have good reason to believe in the success of their plans, because this agreement reassures them with respect to the fair treatment they will receive in the case of an unexpected turn of events.

This paper is organised as follows: The first part is devoted to the impossibility of founding institutions on an opposition between the State and the market. The second part draws mainly upon the work of Rawls and Sen to define another principle for the structuring of this debate, i.e. the articulation between the person and the institution. Our interpretative framework is selective. It is intended to "extract" from these works those elements that are of a nature to nourish the discussion on institutions as outlined above. These elements are recapitulated and restated in the third section in which we provide a brief example of the type of analysis we argue for.

I The Impossible Opposition between the State and the Market

Theories of social choice, engendered by Arrow's impossibility theorem of 1951, are aimed at analysing whether it is possible for a society to choose an optimum social order under the twin conditions of respecting the diversity of individual preferences regarding possible "social states", and implementing a democratic choice. These theories attempt to found institutions on the grounds that they arise from a process by which they are collectively chosen (or created). The first debates in this context nourished 1. an opposition between the State and the market economy (an opposition which even today structures most work in economics); 2. a standard conception of rational action. These two points must be contested, as we will see. Two new issues, however, also arose and have to be integrated. Firstly, the focus should be not on formal and exogenous allocation procedures, but on the effective and endogenous processes of collective choice (Buchanan). Secondly, the important feature of these processes is the practical knowledge used by agents in a situation of action (Hayek).

1.1 The institution problem according to Arrow

As we know, Arrow made a fundamental demonstration. It is impossible to rationally construct a State that maximises social well-being through a global policy and is also the result of a democratic choice. In such a choice, the social optimum must be of a nature to maximise individual utilities. Arrow demonstrated that with the exception of a few very particular cases, this is impossible. Certain individuals will be disadvantaged. A benevolent dictatorship is the best State that can possibly be constructed. It imposes the necessary collective choices on a society that remains unable to reach a positive decision on its own, even if each of its members, individually, feels that these choices are necessary.

Indirectly Arrow's result is a strong criticism of the classical utilitarianism that is the basis of standard economic theory. It therefore opened a field of research on the alternatives to utilitarianism as the foundation of collective choices, and this is what makes it interesting. We will look at these new notions here. But Arrow's work preserves a standard model of rationality founded on the maximisation of individual utility. This has a two-pronged consequence. On the one hand one must postulate that there can exist an "enlightened" mind capable of knowing all the facts that are pertinent for the social choice. The judgement of social well-being must be entrusted to this mind. The State is assumed to be able to have objective knowledge of social reality such as it is in fact, an assumption which shows great positivistic naiveté concerning public statistics. On the other hand, the institution alone is responsible for collective choices. It has a status of outside existence. It functions according to a set of penalties and incentives that are designed to harness the rational individual to collective choices, willingly or not. Individual liberty is seen as potentially dangerous; it seems impossible that liberty can work to create opportunities that are favourable to a better social optimum. Public debate is imprisoned in the oppositions between State and competitive markets, between holism and individualism. The centre, and the economists who advise it, are in the position that we have called the convention of the external State (Storper and Salais, 1997). This position holds that the common good stems from a doctrine that is exterior to the movement of society; it is scientifically knowable, and therefore not arguable. Consequently the common good need not be recognised as such by each individual singly. This strand runs through public economics, neo-institutional economics, or theories of regulation.

1.2 Buchanan and Hayek, a liberal definition of the institution problem?

This structuring of the debate, i.e. omniscient State vs. standard rationality, left much room to liberal criticism of States in the post-war period. This criticism has been all the more on target that the "economic eunuchs" with the power to run the system, an entity James Buchanan deemed so hard to find and which he derided,⁴ have indeed largely demonstrated their impotence. The two criticisms voiced by Buchanan and Hayek are powerful and are echoed today, notably in the issue of the proceduralisation of public choices. For both authors the market economy is the only effective procedure of social choice, and is the foundation of all institutions. But while the former starts out from the standpoint of the rational individual, the latter takes the viewpoint of the centre.

For Buchanan, Arrow's error is to have confused the definition of a function of social well-being with the process that effectively leads to this well-being (Buchanan, 1954 a and b). Arrow does indeed show that there can be no rule that will let the public decision-maker establish an optimal social order on the basis of individual preferences and values. But this is not the problem. In the absence of such rules, there can be processes of choosing that lead to a coherent collective choice. Buchanan analyses and compares two processes, the market and voting. The market leads to a coherent social choice at a collective level, because each individual is able to employ his or her freedom of action to achieve as best possible his or her individual's ends— even though, on a political level, it can be regretted that nothing in the market corrects the inequalities of wealth and power that deflect the capacity of individuals to affect the outcome. The preferences of individuals are revealed only afterwards by their

⁴ Most of the references can be found in Rowley, 1993. Our bibliography gives original references.

choices, and not in their choices, which means that we cannot know them beforehand.⁵ It is thus impossible to simulate the process of social choice by replacing it with the optimisation of a function of well-being.

The properties of voting are not as strong, but Buchanan emphasises that this is preferable for choices of a political nature. This example lets him demonstrate the non-democratic aspect of Arrow's approach. What is to be thought of decisions made by the centre that would be irrevocable by virtue of their claim to being optimum? How can one imagine that individuals would accept such decisions? Much more preferable are rules such as majority rule which leads to collective decisions that can be revised, because they are temporary. In exchange one must accept at the outset a lack of coherence in the social choice, but which leaves the way open to the democratic dynamics of realisation and adjustment. This is what in 1955 Buchanan called "government by discussion".⁶ All of this is interesting and noteworthy. Except that Buchanan succumbs to a dogmatism of the perfect market. The paradox of this position is well known, the freedom of the rational individual is reduced to accepting the only decision actually offered, that of the market procedure which has been forged for the individual. No room is left open for genuine action. Buchanan and along with him all of neo-classical economics, leave behind that which constitutes the heart of political liberalism, freedom understood as the space of possible action.

Hayek rejects this abandon (1945). He recalls that action much be conceived as freedom, that is as an opening up of opportunities. This is a second point to be noted with respect to the institution. By definition it creates spaces for action, by attributing rights, and by leaving room for the exercise of practical knowledge. This is necessary for the centre. Uncertainty is radical, when it is a matter of achieving an optimal social choice. There is no pathway other than relying on individuals' choices. Each individual, by virtue of his/her trajectory and acquired experience, possesses a decisive share of the knowledge relevant to collective action, the knowledge of the particular circumstances of time and place. The individual alone is in a position to find and efficiently use the requisite resources, to ascertain the action that is appropriate here and now. For Hayek, the institution is not constructed as it is in Arrow, i.e. it is not deduced from a rational model forged beforehand and then implanted by a centre. It appears rather to guarantee a spontaneous order stemming from the decentralised coordination of individual actors. The model is spoiled, however, as with Buchanan, by a dogmatic prejudice in favour of market ideology.

II Rawls and Sen: the Person and the Institution

Despite some interesting progress, these initial debates do not move beyond the opposition, ultimately dogmatic, between State and markets. To move forward on the path of the institution two questions must be examined: 1. Are general references (whether universal principles or simply presumed to be shared by all) such as "the good" or "the just" present in

⁵ Samuelson (1947) adopts the same position hostile to psychological models that seek to give a representation of individual choices. The distinction between revelation by choices (the pragmatist position) and in choices (the psychologist position) is developed by Sugden (1993).

⁶ This said, it is a particular kind of discussion. For Buchanan, individual preferences are immutable. It is the values that shift in the discussion. The constitution is the transcription of the final outcome of the progression of values towards an agreement. There is thus no room for universal criteria. In this light—but this is another debate (see parts II and III)—we must maintain that their materialisation be subject to deliberation. In contrast the authors we study below give the immutability of a general reference to these values (or at least certain of these values).

individual action? 2. If so, how are they actualised in the situation of collective action? The first answer is that the action must be grasped as deliberate action: it aims for its effectiveness. To this end, the action is based on the premise that there is a collective dimension in its course. The second answer is that the institution must be grasped in the context of action. The aporia of the preceding debate show that an institution does not draw its meaning from an external construction or from a spontaneous manifestation (in other words unintentional). Action and institution must be conceived as dynamically linked.

John Rawls and Amartya Sen have a common concern: shaping institutions as the locus of expression of criteria of fairness based on equal freedom for all individuals. They formulate the market as coordination, not as dogma, and they seek to understand to what extent and in what condition markets enable individuals to freely formulate and accomplish their life plans. They consider individuals whose actions are based on the premise that they live in society (and that their plans help make society). Establishing a link between institution and action is the strong point of their work.

2.1 Rawls and the plural nature of models of justice

In his early writings Rawls looked at the conditions of a successful coordination between people in ordinary situations in daily life. Later he turned to theories of justice of an appropriate nature for founding a rational social contract, returning to the themes of political philosophy. Here we will limit ourselves to early works that provides a clear answer to the first two questions.

2.1.1 *The fair institution as practice*

Rawls conceives social institutions not as sociological or political entities, but as practices, i.e. social activities specified by a system of rules. An institution is made up of rules on the one hand, and on the other of the meaning given to these rules when they are taken as the reference for action by individuals. The institution thus becomes fair, and at the same time "real" when it furnishes the basis for fair actions that refer to the rules of the institution. An action is fair if it manifests to others that its author respects a principle of justice, above and beyond his or her own personal interests, and that he/she can reasonably expect the other party to accept this principle. Thus joint activity is possible. A commitment to the duty of fair play implies the right to obtain this same voluntary commitment from others. Such a criterion also allows everyone to assess the degree of fairness of an institution from within a joint act. Everyone possesses an innate sense of fairness that endows them with a moral position. This is essentially "to recognize another as a person one must respond to him and act towards him in certain ways" (Rawls, 1958, p. 182). This sense of fairness allows everyone to grasp whether in daily life their actions and those of others comply with a general principle of justice.⁷ This is why the just precedes the good; only actions that manifest a principle of fairness have an economic value. Justifications put forth to defend institutions in terms of the greater collective well-being and economic efficiency are not sufficient. Certain institutions (the example used is slavery) are absolutely unjust, and lead to actions that all individuals, from the moment they act as moral persons, judge to be of no value whatsoever.

⁷ "...so having the elements of morality is not a matter of choice or of intuiting moral qualities, or a matter of the expression of feelings or attitudes (the three interpretations between which philosophical opinion frequently oscillates); it is simply the possession of one of the forms of conduct in which the recognition of others as persons is manifested." (Rawls, *ibid*, p. 183).

2.1.2 Rationality and judgement of possibility in Rawls

Rawls refuses to accept that neo-classical utility is the social measure of all action. He does not, however, bow down to self-interested altruism or to irrationality, nor does he make the social institution into a guard-rail embedding opportunism. In so doing, Rawls crosses a major dividing line, the line separating those who stick with opportunistic individual rationality from those who take for granted that a general reference is present in individual action (for Rawls a principle of justice). The persons he considers implement a realistic rationality that is close to a form of reason, "reasonableness".⁸ They are capable of deducing the consequences of adopting one practice over another, of sticking to the course of an action once it has been decided, of resisting the temptations and attractions of immediate gain.⁹ For they react not to a simple sentiment of unfairness (in other words, suffering poor treatment compared to one's hopes or desires) but to the presence or absence of a principle of justice.

The theoretical innovation introduced by Rawls is to accept that everyone knows that they live in society, and not alone. Before even taking action all individuals know that in order to carry out their life plans they must make these actions acceptable and intelligible. Their actions must be such that they can bear discussion, in the event of conflict. Giving these actions a reasonable reference to a principle of fairness is therefore efficient; it can thus be anticipated that the action will be adequately accomplished. With the assurance that they will be treated fairly if a problem arises in the course of their action, individuals can extract from the flow of contingencies the openings for carrying out their life plans that are potentially to be found in any given set of circumstances. They can apply in the course of their action what we will call "a judgement of possibility". Individuals thus escape the tyranny of opportunism which otherwise would oblige them at every moment to do things that they know they should not do.

The quest for an optimal normative model which is characteristic of the late Rawls in *A Theory of Justice* (1971) is problematic however. The first part of the book recognises that it is possible to refer to several general and legitimate principles or models of justice. Conflicts of references are possible in the course of joint action. Rawls distinguishes four models following the interpretation of his second principle.¹⁰ But his search for a rational social contract, for a political agreement between rational individuals, eventually leads him to retain only one model, that of abstract equality. The scope of the judgement of possibility in action is restricted, because there is now only one model of justice to back it up. The institution becomes separated from ordinary circumstances, unlike the intuitions of 1958. By contrast we have seen that Buchanan in his way showed that the imperfections of voting as a procedure of selection leave open, by way of compensation, the possibility of amending the resulting institution in light of its performance.

⁸ We espouse the notion of Catherine Audard expressed in her introduction to Rawls, 1993. She notes that in his recent writings Rawls has refined in this direction the concept of rationality that he drew upon in *A Theory of Justice* (which brings it back to the conception of his early works, as we have pointed out here.)

⁹ This differs greatly, and it is to Rawls' credit, from Elster or Granovetter, not to mention Williamson.

¹⁰ Rawls' first principle is on the order of a Declaration of the Fundamental Rights of the Individual; "each person is to have an equal right to the most extensive basic liberty compatible with a similar liberty for others", TJ, §11. According to Rawls, models of justice are: democratic equality relying on purely abstract criteria and procedural criteria; liberal equality and the system of natural freedom, both leaving room, though differently, to individual differences in talent; and finally the natural aristocracy.

A bifurcation in the road appears at this point. The other path is to carry the present interpretation further in the direction of the institution as practice. In this interpretation institutions are seized in the movement of things, of practices and interpretations; they are inseparable from their history and the debates they spawn. They are only the contradictory fruit of compromise between several models of justice; knowing that these models are mobilised by the action of people and by their judgements of possibility. Individual rationality is founded on "reasonableness", i.e. on the capacity to make a judgement of possibility. An individual action can hope to reach its goals in the course of a coordination only if it shows that it refers to a "good reason", that is a reason of a general scope, not an individual or sectoral one. This good reason can of course be challenged, but by juxtaposition with another good reason, and not by reference to a private interest. Do we have here a point of departure for research into institutions that could emerge from the ruts of the State vs. markets debate?

A number of questions remain to be explored before we come to part III. 1. What is a "good reason"? Is it solely a legitimate justification in case of dispute, or does it also raise a concrete problem of justice involving real situations? 2. If the State has neither external or internal foundations, if it is neither really built nor emerging, can it be deemed to stem simultaneously from both roots? Can one say, and with what meaning, that its foundation is conventional, that is it is the object of mutual expectations among individuals?

The criticism of Rawls' system, formulated by Harsanyi and Sen, helps refine these questions. We will run up against an absence, however, the absence of the common good, which mutilates the possible responses: to the first question, concerning the evaluation of the action of individuals; and to the second question, on the place allotted to the State in the coordination.

2.2 The State, impartial spectator of individual utilities or evaluator of the capabilities of persons

Two points are to be considered here, the normative conception of the individual held by the institution, and the status granted to the State in the coordination.

2.2.1 *The normative conception of the individual, held by the institution*

How are individuals (with their projects, resources, the impetus of their actions, their lives) caught up in the institutional project? The weakness in Rawls' treatment is that it does not consider the individual as a person. A person is a singular human being, situated in a social matrix which is located in time and space, endowed with values, set upon a biographical trajectory. An individual is one specimen among others of the same general model of rationality. Making the rational actor over into a reasonable individual does indeed enhance the formal presentation. But Rawls thinks the problem of the institution can be resolved in such a way that the creation of the institution corresponds to that which can be expected of rational individuals entering into a contract from behind a veil of ignorance. At the decisive moment of the original situation, the Rawlsian individual is an individual who rationally commits self-mutilation out of necessity, the necessity of political consensus. Individuals seek an agreement, at the cost of completely shedding their personal characteristics. This inevitably has repercussions for their life plans, and for their lives themselves. For once they have obtained primary goods, they are left to their own devices for carrying out a life plan. This leads the Rawlsian individual to be overly prudent. Removed

from its technical context, this is the essence of the criticism formulated by Harsanyi on the maximin criterion.

In Rawls' initial situation, individuals act as if they are assured of personally encountering the worst situation, and therefore should choose, among all the worst situations, that which is the least bad. This criterion, known for these reasons as the maximin rule, can found the social contract, being rationally acceptable by all. For Harsanyi (1975) the maximin criterion formalises a type of behaviour that is not prudent, but more basely pusillanimous. Rawls' individuals voluntarily limit the range of their choices; they run the risk of rejecting positions that could later turn out to be more advantageous. For example, they would refuse to go to Chicago to take a better job than the one they have in New York because the plane might crash. Or, in circumstances where medicine in limited supply must be administered, either to terminally ill patient B or to patient A who is basically healthy and can be saved, the maximin criterion would lead to the decision to give the medication to B who is in the least good position, contrary to common sense (and to the criterion of social utility) which would administer the medicine to A. Of course these are extreme examples, and social choice pertains to institutional arrangements and not to an individual situation. The need for political consensus does ultimately have a cost for individuals, a certain restriction of their potentialities. One thus comes to the harmful paradox in which accepting a principle of justice (justice taking precedence over the good) does not clearly emerge as the pathway for carrying out genuine life plans in society.¹¹

2.2.2 The status granted to the State in the coordination

In response to his critics, Rawls insisted on the importance of the institutional "basic structure" for fulfilling expectations of justice in his theory. Rawls speaks more of the "actual institution" in the sense of an institution of common knowledge, than of the State.¹² That which is common knowledge is understood by Rawls to be public. The guarantee of publicity which is given follows closely Lewis' definition of convention. The guarantee ensures the effectiveness and stability of the institution, and any person who excludes himself from the principle of justice underlying the institution (and that is entirely possible in *A Theory of Justice*) does so with full awareness of the consequences and knowing that other people know, etc. Rawls' orientation is clearly "situated" here, but it falls short: there is no process giving substance to the State, neither by institutionalisation, nor even by a conventional interplay between actors. His approach does not take into account the confrontations with reality to which institutions are subjected in economic activity. Nevertheless these confrontations are part of the reality that the institution takes on for actors. They nourish the public debate and foster a trend for the amendment of institutions. The common knowledge regarding institutions invoked by Rawls is in fact a goal, which is constantly reiterated and sought after. In this perspective, common knowledge is subjected to a pragmatic construction in the context of action. It takes on the status of a local conventional agreement between actors. This agreement authorises them to believe in the reality of the institution and in the efficacy of its intervention.

¹¹ Behind this can be glimpsed the fact that in Rawls' construction the goods sought after in society are solely private goods (or goods defined within groups of limited size) and not common goods. Cf. part III.

¹² TJ, §10.

Amartya Sen underscores the need for impartiality and objectivity which is specific to the social choice. He advances the concept of capabilities of a person, and calls upon the State to perform an objective and situated appraisal of these capabilities. The equality in freedom defended by Rawls is insufficiently spelled out and the informational framework too sparse. Rawls intends to correct the inequality of means, i.e. initial endowment of primary goods.¹³ The realisation of their life plans, goods acquired or consumed, are entirely dependent on good use of individual rational judgement and responsibility. For Sen, the true problem is that of the actual conditions that make this use feasible. The difficulty stems from the model of justice chosen by Rawls, which is a model of procedural equality. This model does not extend its observation and judgement to the formulation and achievement of life plans. It ignores the idiosyncrasy of personal talents as a possible foundation of a just and economically efficient social order. Sen's criticism is divided into two parts.¹⁴

1. People possessing equal means remain unequal in their possibilities. For example, a handicapped person, with equivalent means, has fewer opportunities to lead the life he or she wants. Nonetheless he or she assigns a value to this life that cannot be contested. Likewise, a housewife faces specific life circumstances. Equal liberty, if it is expressed in terms of procedural rights, is insufficient. The state of actual freedom of choice must be considered. The responsibility of a person must be judged and required conditionally, considering the person's status of actual freedom.
2. Certain goods have an intrinsic value, regardless of people's appraisal or preferences. These appraisals and preferences can be perverted, because they are conditioned by people's surroundings and past lives.¹⁵ For example, a poor person will underestimate his or her basic needs. It is therefore not enough to eliminate by political agreement absolutely unjust preferences; some instance must see to it that these intrinsic goods are equally accessible to all. The list of intrinsic goods is long and open.¹⁶ For Sen it can include quantitative and qualitative goods (such as, to compare poverty in Harlem in New York City to poverty in Bangladesh, "appearing in public without shame; taking part in the life of the community"¹⁷); it is not tied to any particular doctrine. It can include utilitarian values (being happy), liberal values (acting freely), Rawlsian values (having self-respect), or more concretely values on the order of Adam Smith's "necessities".¹⁸ The establishment of the list cannot be left either to markets or to individuals. In addition the list depends on the social context.

¹³ As a reminder, for Rawls a primary good is that which all rational people are presumed to want: the rights, liberties and opportunities offered to an individual; income, wealth, self-respect, etc. See TJ, §11.

¹⁴ Sen has expounded his views many times. Here we refer to Sen, 1990 and 1993, and to Sugden, 1993.

¹⁵ We learn to desire only that which we feel is attainable, a situation which Sen calls "entrenched deprivation". Rawls' primary goods do not have an intrinsic dimension, but only a consensual one: they are what all rational people are presumed to want.

¹⁶ Due to the "plurality of our concerns", Sen, 1993, p. 70.

¹⁷ And in all the specific "functionings" that pertain to particular social and local conditions of the people involved (see below).

¹⁸ In Smith necessities have a socially constituted dimension. Women in England must have shoes in public and precisely leather shoes, otherwise it is "a matter of shame", whereas, he tells us, the same is not the case in Scotland (in the 18th century it should be remembered). Quoted in Sen, 1983.

2.3 The informational basis of judgement of justice and capabilities

The existence of intrinsic goods requires objective evaluation of inequalities. To this end Sen introduces the concept of the informational basis of judgement of justice (IBJ).¹⁹

Sen's set of axioms defines the course of a person's living (and not a "life") as a set of elementary functionings (themselves made up of beings and doings).²⁰ These functionings are many and varied. Achieving them implies capabilities. The course of the life of an individual can thus be appraised in its focal features as the degree of attainment of a n-tuple of functionings. A person's capabilities are then taken to be the range of possible livings within which the person has actual possibility of choice. In other words, capabilities are a measure of the actual liberty of choice that a person possesses regarding the alternative livings that it is possible for him or her to lead.²¹ To assess capabilities, the institution must conduct a situated judgement,²² that is a judgement pertaining to the opportunities that are actually available to the individual, at a given time and place, to lead the life he or she desires. The just institution is one that successfully reaches an objective judgement of opportunities and offers adequate resources to all. In this reasoning Sen shifts the problem of the institution. The issue is no longer the original political agreement, but the adequacy of the informational basis of judgement with respect to the requisite criteria of justice.

Sen thus adds some important points to those identified by Rawls' for the construction of an economic theory of institutions. The theory must be centred around arrangements for public action, and specifically their arrangements for judgement of individuals and circumstances. The goal of justice, the scope of inequalities to be corrected, is measurable. Sen does not exclude out of hand a plurality of principles of justice; compromises can be reached between different principles of justice and can be incorporated into the arrangement for judgement. In this analysis the IBJ of an institution is that which gives it a "practical" meaning and intelligibility. It is, but in a way that differs from Rawls, an "actual" institution as it is apprehended in its operation. The IBJ, says Sen, is "the information on which the judgement is directly dependent (NB: regarding a person's circumstances which can be used by law); it is such that the truth or falseness of the information which is excluded can have no direct effect on the correctness of the judgement".²³ It circumscribes "the territory in which the considerations of justice are directly applicable". We will argue (see below) that the "pertinent situation" which is defined in the course of collective action (and on which this course rests) is a territory of this kind.

But Sen leaves three questions unresolved:

1. Where does the list of intrinsic goods come from? In the name of what does the State draw it up? Sen's answer is that there are significant cases in which everybody agrees upon the nature of well-being, regardless of their own moral commitments, and that

¹⁹ Abbreviated as IBJ in this paper. Sen, 1990.

²⁰ As can be immediately sensed, these terms are practically impossible to translate into French, given their essentially pragmatic dimension (in which outcome and process are commingled). This is one of the difficulties in treating Sen's work.

²¹ Restricted, it should be remembered, to the livings to which the person assigns value.

²² Sen does not use this term.

²³ Sen, 1990, *op. cit.*, p. 111.

there is therefore no need for political verification. For example, it would be automatically agreed that those handicapped at birth need more resources. This response is intended to counter the contractualist position which leads to the conclusion that because it is impossible for them to cooperate, the handicapped offer nothing in return for their advantages, and therefore must necessarily remain outside of the social contract. This position is manifestly weak, however, and the question cannot remain unresolved.

2. Sen's systematic usage of broad statistical categories (sex, age, handicaps, race, etc.) belies the very principle of a situated IBJ aimed at appraising trajectories and opportunities. It constitutes a general, static and a priori judgement on the person. It is opposed, term for term, to all that which a judgement of possibilities for a living should be: specifically focused, concerned with processes, adjourned until the outcome reveals in practice what the individual has achieved with the resources he or she received. The categories of public action must be opened to revision, and not naturalised.
3. The notion of common good is not worked out. As a result there is neither foundation for positive intervention by public institutions, nor for objectivity in their judgement in terms of justice. Fundamental social rights (another name for intrinsic goods) remain without justification, despite the intuitive sense of the central role that the capabilities of people should play in this domain.

III Institution, Common Good and Principle of Justice

This third section takes up again the theoretical aspects highlighted in the two preceding sections. The aim here is to outline a theory of institutions. The essence of this theory is pragmatic and concerns what we could call "situated institutions".

3.1 Towards a pragmatic theory of "situated" institutions

The preceding set of assumptions - the mobilisation of the knowledge of the particular circumstances of time and place in Hayek, the institution as practice in Rawls, the appraisal of the capabilities of persons in Sen - points to a pragmatic theory of situated institutions. Here we will look at the shape of such a theory, starting with Rawls.

The fundamental feature in Rawls is that fairness is set up as the internal reference for economic action. In order to be actualised in a situation this reference calls for the guarantee of an institution. Two factors shore up this conviction: the role played by expectations of justice in production and distribution; the importance of fair judgement in arrangements for public action. As evidence there is the parallel, unpremeditated, that can be drawn between the four models of justice presented by Rawls (1971) and the four worlds of production constructed in Storper and Salais (1997). This juxtaposition suggests that the coordination according to a given world solicits, in the expectations of all, a reference to the corresponding principle of justice²⁴. For example, coordination according to the market world would make reference to the principle of liberal equality, coordination according to the interpersonal world would refer to the system of natural equality. Take, for example, forms of remuneration that

²⁴ In Storper and Salais, 1997, we distinguish four worlds of production: industrial world, market world, interpersonal world and intellectual world, depending of the type of product or service designed : standardised or specialised, generic or dedicated. The connection with the four models of justice of Rawls, 1971, is suggested in Salais, 1998.

elicit expectations of fairness: pay according to merit measured on the spot would fall under the system of liberal equality, and tariff according to the price of the product would come under the system of natural equality. Lastly, the comparison underscores that, as justifications of types of economic action, there exists social theories and semantic systems.²⁵ These theories and semantic systems are called upon in the processes of making institutions.

We must therefore build upon recognition of the fact that issues of justice are of central importance in arrangements for public action. Any act related to the functioning of an institution necessitates a judgement on actors (individual, business, collective agent) and on their situation and possibilities of action in the society or economy in question. This judgement raises a substantive problem of fairness. For the institutional act is relevant to past and future realities. It puts lives and trajectories at stake. It provides or takes away resources. At its core it raises the question of evaluation, or in other words of judgement of persons. Whether it is a matter of granting funding or aid, following through on demands, overseeing exercise of rights, etc., in all circumstances the judgement that will lead to a certain institutional act must be well founded. To be well founded it must have certain specific characteristics— be indisputable, acceptable and even anticipated. It must aim for a status of common knowledge so that action can be founded upon it. Having reached this point, a number of issues need to be examined in greater depth and taken beyond the point where Rawls leaves them.

a) Judgement in equality

The unifying trait in the works examined is that the institution judges in equality. But of which equality are we speaking? In the procedural conception of justice that Rawls has chosen as a normative model, it is equality in freedom, as it is authenticated by its first principle. This is, of course, an inviolable foundation. But the question of an effective appraisal (for example, of opportunities actually offered in the course of life) is pointless. Because in Rawls there are only private goods, not common goods, or at the most community goods, that is goods that fulfil the goals sought by freely constituted groups of their own accord (agreement is shown individually by joining the group). Sen's criticism is implacable: one has to raise the issue of appraisal of the possibilities actually offered in the course of life.

b) The plurality of principles of justice and how to reach a common viewpoint

Recognising that there is a plurality of principles of justice has considerable consequences for the conception of the coordination to be chosen. A "true" plurality implies that the disagreements that arise in circumstances of action may sometimes be of a nature to block the construction of a basis for common judgement resting on a single principle of justice. This aspect is not fully integrated by Rawls. He does indeed distinguish between the concept of justice and the various conceptions of justice that are present in any society; he thus describes a well ordered society as a society where "while men may put forth excessive demands on one another, they nevertheless acknowledge a common point of view from which their claims can be adjudicated."²⁶ But he does so in order to transform the rational acceptance of the two principles of justice into this common viewpoint. If Rawls' solution is rejected, one path is left, whereby this "common point of view" can be obtained by a common focus on a good that is placed above the level of the current action, by convention among persons. This

²⁵ Boltanski and Thévenot, 1991, *op. cit.*, in particular have tried to elucidate the sets of vocabulary that are specific to the Cities the foundations of which they search for in political philosophy.

²⁶ TJ, §1.

focusing by convention on the common good that underlies collective action offers the possibility of maintaining its course, regardless of the different registers of action and principles of justice called upon in daily life. Nobody can deny that there are several ways to achieve a given common good, such as full employment or reduction of inequalities. In this way it becomes possible for each individual in the course of action to suspend judgement on the action of others and continue to act, because there is no way to ascertain at this moment if the action of others is aimed or not at achieving the good.

c) The public nature of the common good

The preceding solution requires us to clarify the ways in which the common good is placed above current action, how it can be both distant and close to this action. A common good "by convention" is a public good in the specific sense that it is at once the target of an expected common knowledge and a subject of debate within the coordination. Such common/public goods inextricably combine requirements of an economic, social, moral and political nature. The study of the historical process of the "invention" of unemployment for instance provides much evidence in proof of this.²⁷ A public good is thus to be unequivocally distinguished from a State good, which has the status of being imposed by an authority that rises above the coordination. It follows that society can no longer be assumed to have an organic unity, either in itself or obtained via any construction whatsoever (this observation is perfectly compatible with the series of efforts to create or demand this organic unity). Any coordination always depends on such common goods, which must necessarily be numerous and subject to revision. They are consequently fragile, circumstantial, plural and contradictory. But isn't this where the social dynamics are ultimately to be found? And must we refuse to have a demanding conception of political interaction?

d) From context to situation of action

A "situation of action" cannot be simply identified as a set of facts. For, the context of an action does not strictly precede it, nor does it constitute an absolute determinant thereof. Nor is the context an individual's strictly internal representation of the external environment. It is also more than a "mode of accommodation between characteristics of the internal environment and characteristics of the external one" (Favereau, 1997). The situation must be apprehended as a possible world that is accessible, or more precisely it is made up of a set of possible worlds that are undifferentiated as to their access. Access is made possible through the agreement on the description of the situation that progressively emerges: the relevant facts, the appropriate categories of knowledge, the problem of coordination to be resolved, the expectations regarding the result. In other terms, collective action advances while providing a common qualification of the circumstances. This is what could be called the pragmatic dimension of action. To be efficient the institution must stick close to the ground, it must spring from the earth so to speak. But this is in no way a local (as opposed to global) event. The "situatedness" of an institution can be obtained by applying general categories of action and understanding, as well as by drawing upon the idiosyncratic knowledge and experience of actors in the field. It depends on the principle of justice at work.

e) The dynamics of institutions

Given the diversity of ends, capabilities, biographical elements and experiences of the actors, one must as a matter of course expect to meet with a range of legitimate references in a collective action. For the judgements of possibilities that are made during action call upon

²⁷ See our earlier works, Salais, Baverez and Reynaud, 1986; Mansfield, Salais, Whiteside, eds., 1993.

these references. In these conditions any institution, in its specific and evolving way, can be nothing other than the contradictory fruit of a compromise between several general references. These compromises are by nature singular. On the one hand, they do not preclude the possibility of referring to different principles of justice in the circumstances (otherwise the action could not take place). On the other hand, they create a hierarchy of access, which guides the collective trajectory in directions more accessible than others. The gaps thus created between expectations and outcomes give actors experience with the institution. From this they acquire a practical knowledge that guides their efforts to reform the institution.

Institutions are thus caught up in an ongoing movement that precludes an analysis of them according to a constructivist mode of genesis, as well as according to a mode of unintentional emergence. They are caught up in the flow of things, of practices and interpretations, in their interaction. They are inseparable from their history and from the debate which arises around them concerning their fabrication, their criticism, their amendment. Each institution is a "block" straining towards a unification that is constantly put off until later, driven by its internal and external contradictions, composed of social theories, laws and rules, usage in practical situations and a chronicle of interpretations. For all that, it nevertheless has a heart. Its heart lies in its material arrangements for public action, simultaneously normative, cognitive and pragmatic,²⁸ the machinery that categorises collective problems, describes persons and their situations, and judges them, the machinery that, on this basis, defines the intervention that is to be carried out by the institution.

3.2 A French situated institution: the example of the assistance to the unemployed who create their own business

The relevant shape of an institution and its effective meaning must always be subject to empirical investigation. Starting with the concrete arrangements for public action implemented by a specific measure, the scope of these arrangements can be reconstituted, by successive "circles", and all the dimensions explored in this contribution brought to light. For instance, a scheme for assistance to the unemployed who create or take over a business (whose acronym is ACCRE) has been studied by Anne-Lise Aucouturier (1998). ACCRE offers a (modest) financing to unemployed who submit an "effective and substantial" plan for creating a business. The plans are reviewed by a local commission (at the level of a "département"). The commission, headed by the departmental office for labour and employment affairs, is made up of representatives from several state administrations: the commission ascertains whether the business plan meets the criteria of being "effective and substantial" as required. At first glance it seems that we have the configuration of a State that intervenes to improve the "employment situation" (that is, above all, a macro-economic concept): this kind of state helps actors in the economy take actions that benefit to the level of employment. It corresponds to the dominant conception in France, among government authorities, of a Centre acting according to aggregated variables, in this case the number of unemployed people. In fact the measure is evaluated at national level according to macro and quantitative variables: cost, number of applicants, number of jobs created, etc.

When looking at the various "circles" (the legislative debate, the content of the projects submitted, the operation of local commissions, the administrative court rulings handed down in response to unemployed whose plans are rejected), the result is quite different from the one

²⁸ Ultimately Sen's IBJ goes no farther than the strictly cognitive dimension of an arrangement for public action, leaving aside the construction of its objectivity and its legitimacy.

expected by its initiators. The interpretation given to the same common good (the level of employment) is very different among the local commissions. For some, it truly means the creation of jobs, for others the success of the businesses created or the simple fact that the unemployed could survive in terms of income. Likewise, the principles of justice that underlie the local decisions have multiple facets. They range from purely procedural fairness (equal treatment for all under the general criteria of the measure) to in-process equity (offer to all an equal possibility of elaborating a feasible project), with various stages in-between (for instance, respect for moral standards that prohibit helping plans for activities forbidden by accepted morals). The informational basis built up to evaluate each project combines standard statistical data and qualitative judgements of proximity on the person, in varying proportions. The effect of a favourable decision often goes much farther than the modest financial aid. It is as if the institution, through its operation and selection, added to the reasons that the unemployed person has to believe in the success of his undertaking; by freeing up the commitment to act, it more or less creates the ultimate success itself. Lastly, in certain departments, the project review includes the applicant in person, who can speak up and make improvements to it. The collectively fabricated nature of the public action becomes apparent. Far from being external, the intervention of the State's representatives is part from a local "conventional" agreement (in our sense) as to what should be done.

3.3 Arrangements for public action

Like the above example, all practical arrangements for public action can be summarised according to four dimensions. By the same token these are directions for research pertaining to a theory of institutions.

1. An arrangement rests upon an agreement about the common good which the institution is to serve and for which it has been created. This is the locus occupied by the State in a theory of situated institutions. This occupation is specific. The State is seen by all as the guarantor of this agreement. Both as a conventional product and as a substantial reality, in other words as a self-realisation. The core of the mechanism is simple. Everyone knows that due to the multiple registers of action and principles of justice, coordination will sometimes fail and will not achieve the targeted common good. By convention between actors the responsibility for handling these failures are devolved to the State, which means that the State must qualify the problem, assess it and act to correct it. In this way public action is set up in which all of the actors, including the State, reciprocally attribute a place and responsibility to each other.²⁹ The dynamics of this public action objectify the State socially and materially. Thus the State can be considered as being at once external and internal, constructed and emergent (historically and on a day-to-day basis). We shall see in the next section several figures of this process.
2. To be appraised as fair and be covered by an institutional act, an individual action must be positively linked to the achievement of the corresponding common good. This link must be observable. For example, we often lose sight of the fact that in order to receive assistance unemployed persons must prove that they are contributing to the goal of attaining full employment, for instance by showing that they are actively looking for work.³⁰ This is a consequence of the primacy given to individual or collective autonomy

²⁹ What Sen calls a "position".

³⁰ See the definition of unemployed person adopted by the International Labour Organisation.

over the institution. The disappearance of this relationship between common good and action is a sign of crisis in an arrangement. When the common good is more than the sum of private goods, the liberty/responsibility pairing that is postulated by the institution takes on a broader and more complex aspect than in Rawls. Going beyond simple equality in formal rights, we must consider the full range of equalities in freedom: notably effective freedom, equality in consideration or in dignity. Different types of responsibility emerge as a consequence.

3. As public action is an action based on common knowledge, all its arrangements must be able, if necessary, to justify their decisions by declaring the principle of justice by virtue of which it makes a decision and the reference to the common good that is the basis for the arrangement. Due to the primacy of autonomy, the State cannot intervene, even positively as a source of means and capabilities, unless it justifies its action by the fact that without this action the desired common good cannot be attained by the actors.³¹ The informational basis discussed above— the definitions, nomenclatures, categories, statistical data it includes— also serves this function of justification. The empirical material that can be used to analyse the institution comes from the public production of qualification of the common good, of regulatory texts, statistics and justification.
4. The standard rationality must be relaxed and extended, but in a specific direction. The answer is not to extend the rational individual calculation, without changing its nature, to the consideration of values (such as altruism) or of the interests of others in a inter-temporal play of anticipated negotiation. Nor is it to fall back on a rationality that goes no farther than the choice of a satisfactory procedure, because it is limited by the complexity of circumstances. And lastly the answer does not consist in eliminating the notion of a rational calculation. Rational calculation remains one of the decisive moments of economic action. But it must be integrated into a joint examination of all the moments of this action: deliberation, decision, realisation in a singular course of collective action. Rawls saw this clearly. No calculation will supplant the necessity of choosing by ourselves. Making a choice implies a commitment to act. Only this commitment achieves the practical union of desire, knowledge and will that is in practice needed to reach the goals that are pursued. In other words, deliberation and realisation combine with calculation and decision to constitute the domain of practical reason. This domain must be considered as unified by the action. But depending on which moment is emphasised, different institutions will emerge, with varying arrangements, goals and rules.³² With this broadening of rationality into practical reason, we are able to understand empirically the dynamics engendered by the use and interpretation actors make of institutional rules.

3.4 The fabrication of institutions and the conventions of the State

Thus the diversity of institutions can be read in several dimensions, depending on which moment of the action is emphasised. In this last section we will emphasise the last moment, realisation. For at this moment the diversity of norms on which an institution can be founded

³¹ There is however an exception among the conceivable State configurations, i.e. the external State (cf. infra).

³² For instance, in analysing acts of work the moment of realisation must be taken to be the decisive moment of the action. Furthermore it determines the structure of the articulation between its different moments.

becomes meaningful for the actors. When viewed at this final moment of realisation, what distinguishes the different types of institutions is the model of equality in freedom that is implemented. This model simultaneously defines the nature of the common good, the rationality expected of the actors and their capability or lack thereof to contribute to the realisation of the common good. Reciprocally, this model is at the heart of the conventional agreement formed between the actors in each situation. Each actor expects the others to behave in a certain way, each actor knows that the others expect him to act in this way, and so on. From this agreement will spring the role expected of the State and a sharing of responsibilities for the common good. The consequence is a range of possible States, presented in diagram 1. Here we will find the theories discussed in parts I and II, but reversed, as it were. In a "conventionalist" approach to institutions, they become theories that are endogenous to the coordination of actors. "Indigenous" arguments find an echo in the theories.

The State and markets are at the two extremes, in opposition as seen in part I. This opposition becomes an opposition between two conventions of the State: the external State and the absent State. They both rest upon the postulate that the common good can be described a priori by reference to a doctrine outside of the movement of society, and that it thus takes on the status of objective truth. Under the first convention, all common goods are exclusively State goods; under the second the common good, if it exists, is nothing more than the sum of private goods. In both cases the individual rationality taken as a basis is the same: individual action does not take on collective responsibility. For the external State, the question is meaningless, for there is no need for each individual to take part in realising the common good (nor find personal achievement in it) in order to attain this common good. For the absent State, each individual must act rationally, in the standard sense, to obtain his private good. Saying that these are conventions is a way of emphasising that these are shared expectations that guide actions. And that these actions themselves realise the corresponding States, each careful to ensure that equal liberty (translated in terms of substantial rights in one case, as procedural rights in the other) continue to be the principle of justice that inspires their action.

Between these two extremes is found a range of conventions that give rise to what we will call "situated" States. The institution and its dynamics postulate that people possess the capability to coordinate themselves for the common good. It is presumed that without these capabilities the common good cannot be attained. This assumes that the common good cannot be described a priori. It emerges, along with the knowledge of it, in situations in the course of collective action. The underlying shared hypothesis of rationality is broadened into a form of reasonableness. Individuals have confidence in the liberty and capabilities of others (and thus in their own) enabling them to progress towards the common good. The resulting State is in a position to actually compensate for coordination failures. The State, of a common accord, holds back in its action, intervening with less intensity, over a shorter time frame, and may even postpone or suspend its action, as long as it is possible to do so while creating the conditions of a commitment and provision of sufficient resources by all.

The different social theories available, with parallels to the situated States, are distinguished by their assumptions regarding equality in freedom, the sharing of responsibilities, and the capability to work for the common good. In part II we traced the elements of these social theories that appear in the work of Rawls and Sen. Political liberalism defends equal sovereignty among individuals in achieving their private goods. According precedence to the liberty of individual acts, it anticipates not an absent State, but a State that intervenes only in order to protect autonomies that are initially fragile until they acquire their

full capacity. In making the redistribution of primary goods a priority, Rawls ultimately belongs in this current of thought. Judgement of effective freedom, as recommended by Sen, draws attention to the individuals' material resources for action, appraised in relation to the living they have chosen and their capability to succeed therein. The judgement of the institution is situated. A difficulty arises, however, with Sen's recourse to general and naturalised categories of judgement for the distribution and assessment of responsibilities. To allot responsibility it is better to have assessments in a given situation that avoid opportunism and the manipulation of information (such as the windfall effects very often seen when public aid is attributed according to general categories).

Theories of the subsidiary State³³ have worked on the question of in-process evaluation. They provide the State with a premise that postulates equal dignity among persons. It is their conviction that each individual or group can work for the common good, and has a great capability for self-direction. Accordingly these theories seek to adequately foster these capabilities, rather than to correct the consequences of their failure by distributing resources, except as a last resort. They perceive the intermediate levels that are closer to people (territories, sectors, etc.) as the collective levels best suited to judgement and information.³⁴ These intermediate levels are presumed to be autonomous. In subsidiary State theories, however, the State remains in the position of supreme authority that defines and measures the common good. Ultimately, this ignores Arrow's question, which is nonetheless crucial: is it possible to construct a State devoted to social well-being which also results from a democratic choice?

IV Conclusion: theory of institutions and capabilities of persons

A pragmatic theory of situated institutions should therefore build upon Rawls, though relying upon Sen with some developments. Sen sharply rectifies the liberal conception, with the reminder that equal opportunity must be effectively present, which means creating for all the requisite conditions for carrying out their life plans. He underscores an essential point, that capabilities are capabilities to do things, and this is the final area of judgement. But he treats capabilities from a static and general viewpoint; along the way he loses the implications of the requirements of life in society. Living in society implies a dialectics between the forming of capabilities and the dynamics of institutions. In the perspective that opens up at the end of this paper, the capabilities of persons, including the capability to conduct life plans, can be formed only by participation in the realisation of common goods. Socialisation in that way is economically efficient. The theoretical shift that is suggested by an approach in terms of convention places at the core of the State "project" neither the establishment of a global function to be maximised (what else are the macro-economic models on which policies of the same name are founded?) nor proceduralisation of collective choices. It focuses on the capabilities of persons to simultaneously manage their life plans and their contribution to the common good. The premise is that people manifest creative action of their own making, action that is intended to achieve which it undertakes and which is a learning process. This premise takes on different forms in institutions, depending on the State conventions that they refer to, but it remains at the heart of institutional functioning and dynamics.

³³ See Millon-Delsol, 1992.

³⁴ The intermediate entities are glaringly absent from the theories studied above. They appear either as freely created associations (Rawls), or as the optimal levels for manipulation of group choices by the centre (public economics), or as organic sub-groups. The "conventionalist" basis of these entities has yet to be elaborated.

Such a theory of institutions should have a specific normative posture. It would not start from an a priori existence of optimal norms. It would try to explicit the diversity of norms and of conventions of the State that are confronting themselves in a given situation of action. Bringing knowledge on the perspectives opened or closed, it would leave actors deliberate and choose in full awareness (and be clearly accountable of their choice on the public scene). The reason of this posture is that we must ultimately accept that there is no best response to Arrow's question. It is broken down into a number of practical issues that actors must resolve in their situations of action. This is tantamount to accepting that the State fabricated as a response is multiple, situated, traversed by conflict, and ultimately always born anew.

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