ANTI DISCRIMINAZIONE
Teorie e Pratiche

# The Many Faces of Equality. From the Identity Turn to the Age of Revenge

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SUMMARY: 1. The many faces of equality. - 2. The identity turn. – 3. What grounds of recognition: legal norms or social norms? - 4. The attack to the identity theories. – 5. The age of revenge.

*1. The many faces of equality* – I have never agreed with the idea that equality is, as Paul Westen wrote years ago in a well-known and often-cited essay, «an empty idea»[1], a hollow concept.

Ideas — legal equality included — are never empty, because every idea springs from a theory, and every theory carries meaning. In ancient Greek, *Theoria* means the act of seeing. It's remarkable how much the origin of a word can reveal. Far from being some abstract thought layered over reality, a theory lets us truly see it. Still, we view reality through interpretation, which is also the only real way to perceive it. But this only works if the theory is sound—and not all are. Sometimes, theories are just echoes of an abstract ideology. What makes a theory a good theory could be debated at length, and I'll go back to this point later.

Theories reflect interpretations of reality, and as such, they can shift over time and across places. This is especially true for theories about equality. Unlike the concept of liberty, which has changed little through history and generally expresses the ability to determine and fulfil oneself, sometimes even just internally (consider freedom of belief), equality has evolved significantly, highlighting its fundamentally relational nature. It leads us to ask: equal to whom, and equal in what respect?

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[1] See Westen 1982.

That is way theories about equality always raise questions of justice—prompting us to ask what people are owed, and why[2].

Even within classic liberal tradition—which draws a clear line between the realms of freedom and of equality—questions of justice do arise. However, these inquiries are approached from the perspective that the primary concern is justice at the initial stage of distribution. By this token, issues of justice are mainly about distributive justice: making sure that everyone receives what's rightfully theirs, meaning compensation for their talents and abilities, based on fair and stabilized expectations—whether those come from an agreement, or an action taken in the public or private sphere, or from a legitimate starting status (like inheriting property). This approach to inequality is, to some extent, reassuring: inequalities are explained by differences in individual skills and qualities. The social structures and institutional contexts that shape those patterns of distribution often get overlooked.

By contrast, in the social democratic tradition, the focus is on the overall properties of how things are distributed. If that overall system is thought to create generally unequal results, since fair distribution of wealth, resources, and social positions is fundamental to a just society, this leads to seeing problems of social justice as stemming from distributive shortcomings and calls for redistributive choices (progressive taxes, subsidies, reallocating resources between social groups, providing services for the public and so on) that must be decided through a democratic process.

Finally, in Marxist thought, injustice stemming from exploitation and class oppression cannot be eliminated simply by redistributing wealth, as long as the social, economic, and institutional frameworks that cause inequality remain unchanged. True justice demands transforming these structures and decision-making processes, as well as rethinking how labour is divided both publicly and privately and challenging the underlying ideology that supports them.

*2. The identity turn* - In recent decades, these classic ways of thinking about justice have started to unravel. This change is often referred to as the "identity turn".

[2] See Sandel 2009, 33.

On a theoretical level, the shift is credited to advocates of multicultural communitarianism like Charles Taylor[3], third-wave feminist thinkers such as Iris Young[4], and recognition theorists like Alex Honneth[5].

These authors challenged the focus placed on redistribution. As a model for justice, redistribution seemed especially well-suited to representing both the social demands of workers and other subordinate groups during the Fordist era, and the conflicts over economic resources that the welfare state was expected to address. At that time, matters concerning various aspects of identity — such as gender, race, ethnicity, religion, and personal status — were seen merely as side effects of how resources were distributed.

In contrast, during the post-Fordist era, the idea of recognition seems to take center stage. For a myriad of complex reasons I cannot fully detail here, globalization — by chipping away at the resources available to national governments for exercising power and political authority — has led to a situation where, to borrow the language of political philosophy, «the most significant conflicts now revolve around matters of truth and the good life, which touch on personal identity, rather than issues of distributive or allocative justice that focus on people's interest»[6].

Within the recognition paradigm, addressing injustice is less about making radical changes to economic structures and more about affirming and elevating undervalued or even scorned personal identities. For this reason, group differences shouldn't be cancelled but highlighted—or, in the more radical take, deconstructed and reimagined in ways that challenge conventional thinking. Only when group differences are rooted in negative judgments imposed by dominant groups should they be countered and eliminated, as they are inherently unjust.

Iris Young argues that racism, sexism, and homophobia are each unique forms of oppression, with their own dynamics, which are distinct from class oppression. While the former can intersect with the latter, it's not possible to rank one or the other as the primary cause of oppression or assign greater moral weight to any single type[7].

[3] See Taylor 1994, 9 ss.
[4] See Young 1990.
[5] See Honneth 2002.
[6] See Veca 2005, 256.
[7] See Young 1990, 42 ss.

Young offers key clarifications in her exploration of what defines a social group. She argues that a group isn't some fixed reality but rather «a construct», and that this concept of a group «carries important anti-deterministic and anti-essentialist insight». There's no unchanging essence (not even gender) that members of a group permanently share or that completely determines what groups can or cannot do, or that keeps different groups from overlapping or sharing attributes. Since groups form through a process, they are fluid: they come into existence, change over time, and may even disappear.

The redistribution paradigm, she adds, by overlooking group differences, often sustains injustice via rules that seem universal but are actually set by dominant groups. For this reason, the main goal should be a cultural transformation. Or, to put it another way, rather than seeing economy and culture as opposing forces, we should view them as categories that interact differently, depending on specific social groups and particular issues.

In the book *Redistribution or Recognition?* we find a lively debate between Nancy Fraser and Axel Honneth[8] over which of the two categories should take precedence. The depth of this discussion, as well as the debate it has sparked among many scholars[9], allows us to recognize the shortcomings of theories that rigidly oppose difference and particularism, equality and universalism. Both Fraser and Honneth do not see these realms as inherently at odds. However, the two scholars approach their relationship in distinct ways.

Nancy Fraser puts forward a dualist approach that keeps the two categories — redistribution and recognition — together, without collapsing one into the other. According to Fraser, this is the only way to truly grasp the link between class inequalities and status hierarchies in today's societies, while also taking seriously «the fact of pluralism», that is to say the existence of diverse perspectives on what justice means.

Fraser argues that any political culture that splits redistribution and recognition —treating them as mutually exclusive — is bound to fail and she uses gender inequality as a prime example of status hierarchies that can't be confined to just one sphere.

Honneth responds that the recognition turn is an attempt to establish a moral foundation for understanding the roots of social discontent. He sees this pre-political drive as the basis for having both one's needs acknowledged in private

[8] See Fraser, Honneth 2003.

[9] See Cavaliere 2023.

life, and the value of each person's cultural and economic contribution — including through work — recognised in public and social domains. By doing so, the challenge of redistribution is absorbed into the broader struggle for recognition.

In her reply to Honneth, Nancy Fraser maintains that this kind of monism falls short of capturing the systemic dynamics of contemporary capitalism, where inequalities are rooted both in economic structures and status hierarchies. Because of this dual nature, addressing inequality calls for both strategies of redistribution and recognition.

As I've already argued[10], I find Fraser's dualist theory more convincing and promising because it considers the social conditions necessary for achieving real equality. What I'd like to emphasize, though, is that in the exchange between these two thinkers, both the monist and dualist perspectives — where one element provides all the answers, or where each part of a theory responds to the others — are explored with a shared goal in mind. That goal is to build a critical theory of social justice that can withstand the challenges of a world where battles over status multiply amid growing economic inequalities. According to the two authors, only by using concepts that can truly grasp the structure of modern society does the "grand theory" maintain its relevance and impact.

*3. What ground for recognition: legal norms or social norms?* - If one is familiar with anti-discrimination law, it's easy to see how the law has helped shape this "grand theory" by including in its basic categories both recognition and redistribution. Differences like race or ethnicity, which are connected to social status, rise two-dimensional justice issues, where failures of recognition are added to failures of redistribution.

However, the legal understanding of these differences has evolved over time, and the development of anti-discrimination law gives a clear picture of this change.

The first wave of anti-discrimination law was driven by an idea of justice as "denaturalization" — in other words, by the principle that natural differences should be considered irrelevant. Here, natural differences refer both to those based on a person's biological traits (like sex, race, or skin color) and to social positions (status) and beliefs (religious or ideological) that people have by birth or at birth.

[10] See Barbera 2025, 153.

In this context it's not necessary to discuss how many of those differences are not truly natural but can be changed by human action. What counts is that the law treats all of them as differences to be set aside.

From such perspective, there's no need to label differences as fair or unfair: what matters is offsetting their impact so that advantages or disadvantages aren't tied to circumstances that are beyond a person's control. In short, the law should be "blind" to assigned differences.

The following era of anti-discrimination law is grounded in completely different principles. Instead of a law that ignores differences, the new law embraces what Iris Young refers to as the "grammar of bodies." The concept of justice guiding this phase centers on recognising identity, meaning that not every difference should be neutralised but only those that aren't essential parts of a person's identity and that are asserted to their disadvantage.

Just as no two individuals are identical, but it's a norm — whether legal, ethical, or moral — that makes them so, a guiding rule is also required to determine which differences matter, and which do not.

This raises the issue of which normative codes should guide such recognition: those set by public authorities (lawmakers or judges), or those established by the group seeking recognition? In short: should legal rule or social norm guide recognition?

The group's demand to decide which differences matter and why calls upon normative pluralism — a principle that essentially projects the diversity found in social and political spheres onto the legal one. Countering the formalist and state-centered views of the law characteristic of positivism, normative pluralism argues that law can't be fully captured by state statutes or court decisions alone. Instead, it affirms the existence of multiple systems of norms that shape the lives of individuals and social groups.

Italian labour law scholars have long embraced legal pluralism, adapting the institutional approach of Santi Romano to a pluralistic vision of society, where social groups are empowered to establish and enforce their own 'laws' (with Gino Giugni's theory of the "*ordinamento intersindacale*" being the most influential example of this stream of thought). However, these theoretical frameworks are not fully equipped to capture the types of normative pluralism discussed in multicultural societies[11].

[11] See Facchi 2005.

The challenge here is not just that different rule systems exist, but that each one is rooted in distinct, sometimes non-negotiable, or even conflicting values. What happens when one set of values clashes with the core principles of democratic, liberal constitutions or the individual freedoms those constitutions protect? We are faced with the question of whether pluralism can, without contradicting itself, allow for some values to take precedence over others, or whether it must reject any hierarchy of values to stay consistent. On top of that, individuals often belong to multiple groups, which can lead to fragmented identities and conflicting sets of rules. Which group identity should take precedence? For example, should a migrant woman who practices Islam follow the traditions from her country of origin, such as wearing a veil, or the norms of her new society, which may encourage or even require her to appear unveiled?

In a paper of some years ago, I argued that when it comes to determine which values should prevail in a collectively binding decision, because these values are so diverse, the answer isn't to turn to the *truth* (or to identity), but to turn to *authority* (or to law)[12].

This was not meant as a return to a statist or self-referential (autopoietic, in Teubner's terms) concept of law. The central idea was that it is to the law to ensure that everyone's freedom coexists[13]. It is therefore to the legislator, but above all to the judge, to establish which differences linked to group identity should be recognized and which should not.

I would like to clarify, albeit briefly, why this task is entrusted primarily to the judges. The democratic nature of political deliberations, from which pluralistic visions of justice derive the essentially conventional (in the sense of collectively agreed) nature of justice, offers no guarantees in the face of the need to correct those deliberations in an anti-majoritarian sense whenever they exclude minorities that are not present or are under-represented in the political process. This essential anti-majoritarian function of the principles of equality and non-discrimination is once again coming to the fore at the present time, when democracy is not only often reduced to the electoral moment and to decisions that are only formally correct, but also tends increasingly to express itself in plebiscitary moments, where 'the people' express its sovereignty once and for all.

[12] See Barbera 2006.

[13] See Ferrajoli 2009, 976.

The argument continued in the aforementioned paper with a clarification that I considered and still consider important, namely that the above conclusion is far from assuming that the power of the judges to define the meaning of differences is legitimate only because it is effective, i.e. only because it is based on authority, and that there is no relationship between the creation of normative meaning by different social groups and the judges' decision.

On the one hand, not only does the legitimacy of judicial power derive from the function of protecting individual rights (even against one's group), but members of the group always retain the moral right and the political freedom to disobey and resist a judicial decision deemed unjust, even though they remain legally bound by it.

On the other hand, especially when it comes to the constitutional judges to decide, a conflict between principles (and between the values to which they refer) is resolved through weighing and balancing, and even more so in all cases where principles such as equality and non-discrimination are at stake. This means that the evaluation of which of the values expressed by the conflicting principles must prevail is not made according to a fixed axiological hierarchy, but on a case-by-case basis.

What might therefore appear to be a flaw in case law on equality and discrimination, namely its variability, is also its virtue. And since the legitimacy of a judge's decision is based on their ability to provide good reasons, it is in this process of justification that the discourse of judges meets with the discourse of social communities, and even with their disobedience and resistance, and is shaped or even modified by it.

It was the rebellion against the stigma imposed on African American citizens by the US Supreme Court in the 19th century *Dred Scott* and *Plessy* cases that led, a century after, to the reversal of the decisions of that court, which legitimised the doctrine of 'separate but equal', and to the acceptance of the anti-segregation interpretation advanced by the Black community. In the European and Italian contexts, similar shifts have occurred in cases involving gender affirmative action plans (*Kalanke* and *Marshall*), or in cases concerning immigration or the rights of same-sex couples with children, decided by the European Court of Justice and the Italian Constitutional Court.

*4. The attack to identity theories.* – However, these issues have suddenly started to be felt in public debate — or more accurately, in how they're portrayed in media and politics — like matters belonging to the past. It seems we have

moved away from the conversation about which differences to challenge and which to protect. Theories, policies, and recognition practices are now being criticized in themselves, especially (it's worth emphasizing) when they're based on a minority group identity.

It is important to explore the reasons of the rebuttal of what liberal thinkers have called «the identity trap» or the «progressive fixation» on identity politics (Mounk, 2024). Here, I won't address the institutional political sphere, which, in many countries — starting with the United States but also including many European countries — is leading to the dismantling (or perhaps more accurately, an effort to deeply uproot) diversity and inclusion programs. Before this political shift, we need to analyse and understand the ideological change that paved the way for it.

As Frederich von Hayek wrote[14], before attempting to bring about political change, it's crucial to first spark a transformation in the «marketplace of ideas», and that begins with a «cultural battle». It seems that Hayek's lesson has been learnt well.

The tools used in this cultural battle over the past few years have been varied and numerous. Challenges to the idea that equality means embracing differences come from a variety of, sometimes even opposing, perspectives. On one side, there are essentialist views that want to preserve distinctions rather than overcome them (for example, those branches of feminism that critique queer theory); on the other, there is the individualistic and universalist free-market approach, which insists that everyone is born equal, that the law assumes we are all equal, and that any corrective measures create undeserving victims. There are also hardline right-libertarian positions, drawing from figures like Nozick or Rothbard's anarcho-capitalism, as well as pro-life movements — all united under a modern version of Locke's banner defending life (from conception), liberty, and property.

However, the attack also comes from progressive positions, such as those who believe that embracing identity politics has led the left to lose its identity, abandoning its founding values (the desire for social justice, the drive towards universalism, trust in progress), in order to embrace a 'tribal' identity that brings only rights and no duties, except those towards one's own tribe.

In the radical right libertarian positions, which have found political fertile ground in the various forms of populism that have emerged in Europe and the

[14] See Hayek 1949, 417 ss.

Americas, the defence of freedom takes on anti-pluralistic and anti-democratic aspects. It would seem a paradox, but it is not. The truth of these positions, according to their supporters, must prevail over the resistance that comes from institutions or political and social forces and from individual dissent itself, and it is above all the charisma of a leader who decides in the name of the people that can impose them.

*5. The age of revenge* - Missing from this list of reasons for challenging the idea of recognition (and, as we'll see, often that of redistribution too) is the notion of revenge, which can take on different forms—be it social, racial, sexual, and so on.

Never underestimate the power of revenge. As an author who deserves an unbiased reading once wrote, «We only know who we are when we know who we aren't, and often only when we know whom we're against»[15].

The concept of revenge is crucial for understanding two key facets of the current cultural and political struggle. First, it's not accurate to say that identity politics are being eliminated; instead, demands for recognition have shifted, with differences now asserted by dominant groups, sometimes in the name of a renewed superiority. Second, contrary to the claim of Veca quoted above, identity and interests are not in conflict but exist side by side. Status differences — now openly acknowledged and even celebrated — are tied to inequalities in income, resources, and abilities, which those driven by a sense of revenge increasingly view as inevitable, natural, and hence not unjust.

The drive for revenge often takes the form of the "innocent victims" of the so-called reverse discrimination. Consider the cases in the United States challenging affirmative action based on race, as well as similar disputes over gender-based affirmative action in Europe.

For a long time, the question of 'remedial equality' was left unresolved in the courts. For instance, in the US, think of the Supreme Court's decision *Bakke* which followed the *De Funis* case; and in the EU, as already reminded, of the Court of Justice's ruling in *Marshall*, which came after the *Kalanke* ruling.

Both played a foundational role in setting standards for justifying affirmative actions—one for race, the other for gender. As mentioned earlier, when courts have addressed the meaning of equality, there has never been a definitive, once-and-for-all victory or defeat.

[15] See Huntington 2000, 16.

However, this has held true as long as there was a broad political and social agreement about equality's inclusive purpose — that is, as long as there was a shared ground with common principles and core values. Today, that consensus has broken down.

For those who don't fully side with the call for revenge, the safer route seems to be a conservative return to formal equality and a renewed embrace of universalism and neutrality.

This is also evident in the fight against discrimination. The latter categories, for example, were recently brought back into legal language by the recent EU *Pay Transparency Directive* 2023/970 on equal pay between men and women. If we don't want to be misled by just the literal meaning of the words, it's essential to carefully interpret these concepts within the context of the directive itself—which is designed to challenge, not perpetuate, gender inequalities.

On this regard, I will argue, the most vital step is moving beyond one-dimensional ideas.

If there's one thing we shouldn't be willing to give up, it's the compelling arguments put forth by critical theories of liberal equality, which have raised legitimate concerns about the limits of universalism, neutrality, and objectivity—categories that too often reflect the values and interests of dominant groups.

Anti-discrimination law challenges us to take the critiques of these values and principles seriously, and earlier I discussed why equality must make room for individual differences.

At the same time, the pursuit of universalism holds onto an idea we shouldn't abandon: that every human being, every person, is born with equal dignity and worth. Universalism isn't just about how we begin our life, but about how that equality is realized over time. There's a line from Montaigne's Essays that beautifully captures this aspect of equality: «Every person carries within themselves the whole form of the human condition».[16]

So, just as justice takes many faces, so does equality. Yet some of these faces are masks warped by ideology, shaped by a logic that isn't grounded in reality, but instead in the internal consistency of the idea itself and that, for this very reason, can become an authoritarian kind of logic[17].

[16] See Schiavone 2019, 3.

[17] See Arendt 1996, 642.

What lies ahead for us is to dismantle the false faces of equality and rediscovering its true forms, and to do so, as much as possible, through a solid theory —one that can grasp the complex structures of today's societies.

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*ABSTRACT*

I molti volti dell'eguaglianza. Dalla svolta identitaria all'era della rivalsa

Questo saggio discute l'evoluzione del concetto di eguaglianza, analizzando le teorie giuridiche e sociali che si sono sviluppate nel tempo, con particolare attenzione alla "svolta identitaria" e alla sua attenzione al riconoscimento delle differenze. Analizza poi il dibattito tra i teorici del riconoscimento, come Honneth, e i teorici della redistribuzione, come Fraser, un dibattito che è fondamentale per comprendere le disuguaglianze contemporanee. L'ultima parte descrive l'attacco alla politica identitaria, in un clima di crescente rivalsa sociale e culturale e di frammentazione del consenso intorno all'idea di eguaglianza, e sostiene la necessità di riconsiderare le concezioni di eguaglianza e giustizia in un contesto di crescente complessità sociale.

The Many Faces of Equality. From the Identity Turn to the Age of Revenge

This essay discusses the evolution of the concept of equality, analysing the legal and social theories that have developed over time, with particular attention to the identity turn and its focus on the recognition of differences. It then analyses the debate between recognition theorists, such as Honneth, and redistribution theorists, such as Fraser, which is central to understanding contemporary inequalities. The last part describes the attack on identity politics, in a climate of growing social and cultural revenge and fragmentation of the consensus around the idea of equality, and argues for the need to reconsider conceptions of equality and justice in a context of increasing social complexity.